

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Business Meeting)
)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 16, 2005

10:01 A.M.

Reported by:
Peter Petty
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

Jackalyne Pfannenstiel, Acting Chairperson

Arthur Rosenfeld

James D. Boyd

John L. Geesman

STAFF PRESENT

Robert Therkelsen, Executive Director

William Chamberlain, Chief Counsel

Song Her, Secretariat

Ken Koyama

Nancy Tronaas

Steve Munro

Keith Golden

Ed Bouillon

Dick Ratliff

Daryl Mills

Caryn Holmes

Martha Brook

Nancy Jenkins

PUBLIC ADVISER

Margret Kim

ALSO PRESENT

William Walters

Consultant to CEC Staff

ALSO PRESENT

Jeffery Harris, Attorney
Greggory Wheatland, Attorney
representing Calpine Corporation

Rick Tetzloff
Calpine Corporation

Issa Ajlouny (via teleconference)

Robert Sarvey, Intervenor
Californians for Renewable Energy

William Garbett (via teleconference)

Eric Tashman, Attorney
Sidley, Austin, Brown and Wood (via
teleconference)

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1 P R O C E E D I N G S

2 10:01 a.m.

3 ACTING CHAIRPERSON PFANNENSTIEL: Say
4 the Pledge.

5 (Whereupon the Pledge of Allegiance was
6 recited in unison.)

7 ACTING CHAIRPERSON PFANNENSTIEL: Good
8 morning, I think before we begin our business
9 meeting agenda we'll start with recognizing the
10 fact that this is Bob Therkelsen's last business
11 meeting, which is interesting, because it's the
12 second business meeting in a row where we've had
13 to celebrate and to thank somebody who's leaving.

14 Because I haven't been here working with
15 Bob all that long, I've asked some people on the
16 staff to come up with some interesting information
17 about Bob that I thought we could all share before
18 we get into some more formal presentation.

19 So, you came up with a few interesting
20 facts about Bob that people might appreciate.

21 MR. THERKELSEN: Is my microphone on?

22 (Laughter.)

23 ACTING CHAIRPERSON PFANNENSTIEL: No
24 comment. Not yet.

25 First, Bob founded, which I had never

1 heard of before, the Olympics for the old siting
2 division. And he was instrumental in the
3 management team's numerous victories in the event.

4 For those of you who are unfamiliar with
5 the siting division Olympics, it included events
6 like the EIR toss and pick-your-favorite committee
7 dart-throwing contest.

8 MR. THERKELSEN: Hmm, I don't remember
9 that.

10 ACTING CHAIRPERSON PFANNENSTIEL: Second
11 is for people who don't know Bob very well, Bob is
12 very big on process. People who invented the Pert
13 charts and the Gant charts had nothing on Bob.
14 Bob used and created more management tools than
15 any person in the history of California state
16 government, I understand, including, but not
17 limited to, the radar screen, the major product
18 calendar and the program status report. Now there
19 are probably a lot of others that people in this
20 room remember well.

21 The third fact, I found this to be
22 fascinating, early in his early years at the
23 Commission Bob was affectionately referred to as
24 The Bird Man because of his work in the biology
25 unit. Where he worked tirelessly to protect

1 California's natural resources, including the San
2 Joaquin Kangaroo Rat and the Desert Tortoise, not
3 to mention the blunt-nosed leopard lizard. Thank
4 you for that, Bob.

5 More seriously, from all of us here, we
6 know that Bob has always placed the staff and the
7 staff's welfare at the top of his list of
8 concerns. And he never missed an opportunity to
9 express his appreciation. So, for that I'd like
10 to read a resolution from the Commission to Bob :

11 Whereas Bob Therkelsen began his career
12 as an energy consultant in 1971 after graduating
13 with a master of science of degree in ecology from
14 UC Davis, and a bachelor of science degree in
15 biological science from the UC Irvine, and moved
16 to the newly created California Energy Commission,
17 and,

18 Whereas Bob served the Commission for
19 over two decades, working in the energy facility
20 siting and environmental protection division;
21 managing an interdisciplinary staff of over 140
22 project managers, engineers, scientists and
23 analysts. And insuring that California's
24 environment was protected as the state added the
25 energy infrastructure needed to meet its growing

1 demand, and,

2 Whereas Bob, during the 2001 electricity
3 crisis, ably led his staff in developing and
4 implementing the six-month power plant licensing
5 process, as well as the 21-day expedited licensing
6 process insuring that the public had access to the
7 processes and that the state's environmental
8 protection requirements were not compromised, even
9 with the compressed timeframe, and,

10 Whereas as Executive Director Bob
11 provided leadership and overall management for the
12 Commission's 475 staff and its \$366 million
13 budget, worked cooperatively and collegially with
14 other state agencies to insure that the state
15 developed and implemented a comprehensive approach
16 to energy development using the loading order of
17 energy efficiency and demand response, meeting new
18 electricity generation needs first from renewable
19 resources and distributed generation, and
20 improving the state's energy infrastructure, and,

21 Whereas, Bob strived to build a
22 management team that would cooperatively work
23 together to meet the challenges and to advance the
24 Commission's commitment to provide accurate
25 unbiased information and analysis in a timely

1 manner to decisionmakers, stakeholders and the
2 public, and,

3 Whereas Bob accomplished all that he did
4 in a positive cooperative way, respecting and
5 appreciating the Commission Staff and their unique
6 talents and the analytical abilities; and leading
7 by example for all who worked with him,

8 Therefore, be it resolved that the
9 California Energy Commission commends and
10 appreciates Robert Therkelsen for his substantial
11 contribution to insuring California's energy
12 future.

13 Thank you, Bob.

14 (Applause.)

15 MR. THERKELSEN: I'm usually not at a
16 loss for words, but I very much appreciate that.
17 Actually I was hoping all this wouldn't happen
18 until tomorrow. But, anyway, I appreciate that
19 and all of you folks showing up.

20 I will say that all of those things,
21 whether it was the Olympics or the blunt-nosed
22 leopard lizard or the processes, would not have
23 been possible without many of the folks that are
24 still in this room. And to that I owe a sincere
25 debt of gratitude to the people that have not only

1 put up with me, but supported me and supported
2 this organization through good times and bad
3 times. And it's been a pleasure to have been a
4 part of it.

5 ACTING CHAIRPERSON PFANNENSTIEL: Bob,
6 before we let you go and get back to our business,
7 let me ask if my fellow Commissioners have any
8 comments to make.

9 COMMISSIONER GEESMAN: Well, I would say
10 that I think one of the best decisions that we've
11 made since I've been here was our decision a
12 couple years ago to make you the Executive
13 Director. And to do so after I think a full
14 discussion of what our options were. We did, in
15 our own minds, conduct a nationwide talent search,
16 and I think we came up with the very best choice
17 that we could.

18 You have greatly improved our working
19 relationships with other state agencies. And I
20 think left a very large pair of shoes to fill in
21 that regard.

22 You've also, I think, very much helped
23 the internal workings of the Commission, both
24 among Commissioners and between Commissioners and
25 staff.

1 And personally I think, I've known you
2 for almost 30 years now, and certainly want to
3 salute you for 30 years of service and 30 years of
4 friendship.

5 MR. THERKELSEN: Thanks, John.

6 COMMISSIONER BOYD: Bob, I'd like to --
7 I can't say I've known you for 30 years, but I've
8 been around for at least 30 years. But I think we
9 first met roughly six years ago when I was across
10 the street at the Resources Agency dabbling in
11 energy issues, and got to know you when Steve
12 Larson decided he wanted you as his Deputy.

13 But I got to know you the best during
14 the crisis. We have mutual scars from that. Bob
15 and I spent days and days to no end across the
16 street under the Capitol Dome during that time.
17 And I would say the comments about Bob's systems
18 and organizational skills served him well.

19 I'd be talking out of school if I said
20 too much about the chaos that existed during those
21 days, and a certain cabinet secretary finally kind
22 of came into the room full of cooks. There were
23 so many cooks in that kitchen I couldn't believe
24 it. But she kind of grabbed the out-of-control
25 group and herded them together. And then actually

1 I had to bring the Energy Commission into that
2 chaos at all, and the Executive Director brought
3 Bob along with him one day.

4 And all I know is shortly thereafter
5 Susan Kennedy adopted you as her son, I think.

6 (Laughter.)

7 COMMISSIONER BOYD: And Bob's systematic
8 organizational skills were put to work; and he
9 added a lot of organization to what was a very
10 unorganized operation. We only had one little
11 piece of it, the generation piece. I won't speak
12 to the other two legs of my favorite energy stool,
13 the contracts. And the conservation part was run
14 by somebody else here who did a good job.

15 In any event, that's where I appreciated
16 the skills that you do have, and admired your
17 ability to charm endless numbers of people. So
18 you will be missed around here and I wish you well
19 in the future. At least you're not retiring,
20 you're going to yet another career.

21 MR. THERKELSEN: Yes.

22 COMMISSIONER BOYD: And wish you the
23 best at it. Good luck.

24 MR. THERKELSEN: Thank you, thanks, Jim.

25 COMMISSIONER ROSENFELD: Well, I've

1 known Bob only for five years, so I'm the junior
2 friend here. And all the good things have been
3 said, but I want to repeat, during those five
4 years it's been a pleasure. The Energy Commission
5 has come out solid as a rock with a great
6 reputation, and thank goodness there's all of
7 Bob's supporters to keep you going that way.

8 But it's been a real pleasure. Thank
9 you.

10 MR. THERKELSEN: Thanks, Art.

11 ACTING CHAIRPERSON PFANNENSTIEL: With
12 that, we'll go back to business.

13 MR. THERKELSEN: Before we go back to
14 business, all four of you, appreciate your
15 leadership and your continuing leadership of this
16 organization.

17 I leave in part on a positive note
18 because I feel the organization is strong, the
19 agency is in good hands, and there's a tremendous
20 future in front of the place.

21 The management team that has worked with
22 me, Scott, and the Deputy Directors Cece, Claudia,
23 Kelly, Grace, the rest of the folks, are strong
24 people. And the neat thing about them is they are
25 working as a team, and they will continue to work

1 as a team regardless of where the organization
2 goes.

3 The Commissioners, the place is in good
4 hands. And, staff, I want to let you know that my
5 leaving, while I have several emotional responses
6 to that, I know the place is in good hands. And
7 the fact that Bill has left and I have left
8 doesn't mean that the rats are leaving a sinking
9 ship.

10 (Laughter.)

11 MR. THERKELSEN: I don't know why Mark
12 left, but anyway -- but the organization is in
13 good hands. And I expect it to go forward in a
14 positive vein regardless of what the organization
15 structure is, the Governor and the Legislature
16 ever decides to put it in. If it's left just like
17 it is, it'll be excellent.

18 But I also did want to say one other
19 note of thank you to the Commissioners, and I was
20 going to do this during the Executive Director's
21 report, but I'll do it now.

22 There were many times that this
23 organization has been in a jam, and the Executive
24 Director has had to get it out of that jam and
25 many times you've had to get it out of that jam.

1 And now that I'm leaving I actually want
2 to leave you some jam. This is jam from the State
3 of Oregon. It's peach jam. I hope that you enjoy
4 it.

5 (Laughter.)

6 (Applause.)

7 ACTING CHAIRPERSON PFANNENSTIEL: Thank
8 you, Bob. Thank you for everything.

9 On to the business meeting agenda.

10 (Laughter.)

11 MR. THERKELSEN: Staff need to get back
12 to work.

13 (Laughter.)

14 ACTING CHAIRPERSON PFANNENSTIEL: Before
15 we begin going over the agenda I have a couple
16 changes to make to the agenda as it was published.

17 Specifically in the consent calendar
18 item 1.a. has been put off to a future meeting, so
19 that is not part of the consent calendar. And
20 item 1.c. has been moved onto the regular agenda,
21 so we'll discuss that when we get to it.

22 So the consent calendar then is just a
23 single item.

24 COMMISSIONER ROSENFELD: Ms. Chairman, I
25 move the consent calendar in its reduced form.

1 COMMISSIONER GEESMAN: Second.

2 ACTING CHAIRPERSON PFANNENSTIEL: In
3 favor?

4 (Ayes.)

5 ACTING CHAIRPERSON PFANNENSTIEL: Thank
6 you. Approved four to nothing.

7 So then what will be item 1.5, perhaps,
8 new item, California Air Resources Board, possible
9 approval of interagency agreement 600-04-020 for
10 \$10,000 with the California Air Resources Board to
11 develop the California component of the hydrogen
12 technology learning center's project in
13 collaboration with Florida and New York.

14 And who is speaking for -- thank you.

15 MR. KOYAMA: Good morning,
16 Commissioners. I'm Ken Koyama with the fuels and
17 transportation division. A couple years ago the
18 Energy Commission received \$250,000 from NASEO to
19 develop high school and college curricula through
20 these hydrogen technology learning centers.

21 We are under obligation to have matched
22 requirements for this grant. ARB will transfer
23 \$10,000 to the Energy Commission to fulfill a
24 portion of that match requirement.

25 The existing contracts with UC Davis and

1 Miramar College will develop the curricula. It
2 has already been written in such a way that they
3 can take on this additional \$10,000 from ARB.

4 So, with that, we request approval of
5 these contracts.

6 COMMISSIONER BOYD: Madam Chair, I'd
7 like to move approval of this item.

8 COMMISSIONER ROSENFELD: Second.

9 ACTING CHAIRPERSON PFANNENSTIEL: In
10 favor?

11 (Ayes.)

12 ACTING CHAIRPERSON PFANNENSTIEL:
13 Approved four to nothing, thank you.

14 MR. KOYAMA: Thank you.

15 ACTING CHAIRPERSON PFANNENSTIEL: Item
16 2, Elk Hills Power Project. Possible approval of
17 a petition to extend the cold startup time from
18 four to six hours.

19 MS. TRONAAS: Yes, good morning. I'm
20 Nancy Tronaas, the compliance project manager for
21 the Elk Hills project.

22 This petition to modify the Elk Hills
23 Power project is for an increase in the duration
24 of cold startup time limits from four to six hours
25 in order to allow the project owner to comply with

1 equipment manufacturer's specifications and
2 warranties.

3 The Energy Commission Staff concluded
4 there will be no significant environmental impacts
5 from this modification because there will be no
6 increase in the hourly, daily or annual emission
7 limits.

8 We have not received any comments from
9 the public or agencies. The Air District has
10 issued a revised authority to construct to allow
11 for the increase in cold startup time limits.

12 It's Energy Commission Staff's opinion
13 that the required findings of section 1769 can be
14 made, and that the project will remain in
15 compliance with all applicable laws, ordinances,
16 regulations and standards.

17 We recommend approval of the petition
18 and the revision to air quality condition AQ-11.
19 Thank you.

20 ACTING CHAIRPERSON PFANNENSTIEL: Thank
21 you. Discussion?

22 COMMISSIONER GEESMAN: The Siting
23 Committee reviewed this matter and recommends its
24 approval. So I would move that we approve the
25 staff recommendation.

1 COMMISSIONER BOYD: Second.

2 ACTING CHAIRPERSON PFANNENSTIEL: Moved
3 and seconded. Approval?

4 (Ayes.)

5 ACTING CHAIRPERSON PFANNENSTIEL:
6 Approved four to nothing.

7 MS. TRONAAS: Thank you.

8 ACTING CHAIRPERSON PFANNENSTIEL: Item
9 number 3. Possible approval of a petition for
10 Metcalf Energy Center LLC to modify air quality
11 commissioning startup and other conditions and
12 requirements for the Metcalf Energy Center
13 project.

14 MR. MUNRO: Commissioners. One minute,
15 please.

16 (Pause.)

17 MR. MUNRO: Hello. My name is Steve
18 Munro; I'm the compliance project manager for the
19 Metcalf Energy Center --

20 COMMISSIONER BOYD: Steve, is your mike
21 on?

22 MR. MUNRO: Is that better?

23 COMMISSIONER ROSENFELD: Yes.

24 MR. MUNRO: My name is Steve Munro,
25 compliance project manager for the Metcalf Energy

1 Center project. And with me is Will Walters, our
2 air quality staff person who prepared the staff
3 analysis, or a great deal of it. And over to my
4 left is Mike Argentine from Calpine and Jeff
5 Harris representing Calpine.

6 I'd like to begin by going over the
7 background of the project. The Metcalf Energy
8 Center project is a 600 megawatt, natural gas
9 fired, combined cycle power plant in San Jose.
10 It's owned by Metcalf Energy Center LLC, which is
11 a wholly owned subsidiary of Calpine.

12 It was certified September 24, 2001.
13 Currently under construction, about 95 percent
14 complete. Commercial operation target date of
15 June 30, 2005.

16 We received the petition to amend on
17 November 17, 2004. We then mailed a notice of
18 receipt for the post-certification mailing list
19 and affected public agencies on December 8, 2004.
20 Posted on the Commission website and docketed.

21 Staff analysis and public workshop
22 notice were mailed to interested parties, docketed
23 and posted to the CEC website on February 9, 2005.

24 Previous to this we had prepared a data
25 request that we had also issued to Calpine for

1 clarification and additional information.

2 A public workshop was held February 23,
3 2005. Approximately 15 members of the public
4 attended that workshop. Written comments were
5 received from five members of the public on March
6 2, 2005. So, of the 15 members of the public,
7 probably in the neighborhood of six or seven of
8 them actually commented at the workshop. And we
9 also responded to those comments.

10 Staff responded to public comments both
11 in writing and the workshop on March 10, 2005, and
12 posted the responses on the Commission website,
13 along with an addendum containing minor revisions
14 to the proposed conditions of certification and
15 definitions.

16 Staff has coordinated with the Bay Area
17 Air Quality Control District. The Air District
18 has published a revised preliminary permit
19 consistent with the staff's analysis, and in
20 cooperation with staff. Staff anticipates that
21 the Air District will approve the final permit by
22 the end of the month. Their comment period is
23 over on Friday.

24 We prepared a staff analysis, and that
25 staff analysis has not changed as a result of the

1 comments or the workshop substantially. And it
2 finds that the proposed modification would not
3 cause significant air quality impacts, either
4 environmental or health and safety.

5 Therefore staff is recommending the
6 Commission approve the proposed modification
7 including related revisions and additions to
8 conditions of certification.

9 I'd like to now ask Will Walters, our
10 air quality consultant who prepared much of the
11 staff analysis, to -- or prepared the staff
12 analysis and much of the response, to present
13 details concerning the results of the staff
14 analysis and answer any questions. Will.

15 MR. WALTERS: Good morning,
16 Commissioners.

17 ACTING CHAIRPERSON PFANNENSTIEL: Good
18 morning.

19 MR. WALTERS: First I'd like to put up a
20 graphic that shows the major changes to the
21 project so that you can refer to them as I go
22 through the summary.

23 First I'm going to start with the
24 summary of the petition. In the amendments
25 Calpine's proposing to increase the hourly and

1 daily carbon monoxide limits during commissioning.
2 To eliminate the current hourly limits on nitrogen
3 oxides, carbon monoxide and precursor organic
4 compound emissions during routine startup, while
5 retaining the overall emission limit for the
6 startup periods per event, and make them a per-
7 event limit rather than they have the per-hour
8 limits.

9 Also to add new nitrogen oxides, carbon
10 monoxide, precursor organic compound, mass
11 emission limits for cold startup and combustor
12 tuning events. And along with that adding new
13 definitions for what is a cold startup and a
14 combustor tuning event.

15 They're also requesting to increase the
16 nitrogen oxides, carbon monoxide and precursor
17 organic compound emission limits during shutdowns.
18 Also they are proposing to reduce the total annual
19 NOx emissions during the first year of operation,
20 the commissioning year.

21 And they're requesting a few other minor
22 permit condition revisions; some are editorial and
23 there are some other that I'll go into a little
24 more detail on.

25 I'm going to start on the commissioning

1 emission limits. They are requesting to increase,
2 and you can see, it's up on the table there. And
3 for your benefit, those things that are
4 highlighted in green are existing limits that do
5 not change. And those that are not highlighted
6 show the ones that do change with the changed
7 number in bold underlined and the old value in the
8 parentheses.

9 They are proposing to increase the
10 hourly and daily CO emission limits from -- up to
11 5000 pounds an hour and 20,000 pounds a day. And
12 they are proposing to make some minor revisions to
13 the commissioning period definition that's also
14 provided in with the conditions.

15 They are not asking for any other
16 emission limit changes, just the carbon monoxide,
17 for the commissioning period. The revised
18 emission limits are consistent with other 7F
19 projects, either that were originally licensed
20 with similar numbers or have gone through the
21 amendment process over the past couple of years.

22 The modeling analysis shows that the
23 increase in emission limits will not cause
24 exceedances of the one-hour and eight-hour CO
25 ambient air quality standards.

1 Now, for the startup emission limits,
2 they are proposing to eliminate the hourly limits
3 that currently exist for routine startups for the
4 nitrogen oxide, carbon monoxide and precursor
5 organic, and they're going to retain the per-event
6 limits. So, essentially instead of having the
7 hourly, it will give them a little more
8 flexibility if they have a bad first hour
9 essentially during a routine startup. But the
10 overall limit for a startup is retained, is the
11 same for what is considered routine startup, which
12 is also defined in some other projects as warm or
13 hot startups that you may have seen in other
14 amendment requests.

15 They are asking to provide new emission
16 limits for the cold startup periods, 480 pounds
17 per event for NOx, 5028 pounds per event for
18 carbon monoxide, and 96 pounds per event for
19 precursor organic compounds. And, again, this
20 will apply only during the cold startup and the
21 combustor tuning events, which are defined
22 separately in those definitions, are provided in
23 the staff analysis.

24 Again, these revised emission limits are
25 consistent with other projects, either as they

1 were initially licensed or several that have gone
2 through the amendment process to date.

3 And, again, the modeling analysis shows
4 that the emission limit increases will not cause
5 exceedances of the one-hour or eight-hour CO limit
6 ambient air quality standards, or the one-hour NO2
7 ambient air quality standards.

8 For the shutdown events they're
9 requesting the emission limits be increased to 80
10 pounds per shutdown for NOx, 102 pounds per
11 shutdown for carbon monoxide, and 16 pounds per
12 event for the precursor organic compounds.

13 Again, these emission limits are
14 consistent with other projects, and they do not
15 cause any significant impacts from modeling.
16 Obviously these emission limits are much lower
17 than the startup up and the commissioning emission
18 limits.

19 They are also proposing to revise the
20 first year NOx emissions, the annual emissions,
21 from 185 tons to 150 tons. This will cause a
22 corresponding reduction in the NOx offset
23 requirement for that first year from 212.75 tons
24 down to 172.5 tons. The emission reduction will
25 be accomplished by revising some of the

1 commissioning methods based on what they had
2 originally thought they were going to do, to doing
3 some other methods that will lower the emissions.

4 And compliance with the new limits will
5 be able to be documented with the continuous
6 emission monitor that will be active from the
7 commissioning period on.

8 The other requested revisions to the
9 conditions include revising the ammonia slip
10 calculation methodology to be consistent with
11 current approved methods. And a few minor
12 editorial corrections to the conditions and to the
13 verifications.

14 In doing our analysis, the major part of
15 our analysis, or maybe the most important part of
16 the analysis was the impact analysis for the major
17 changes to the short-term emission limits. The
18 change to the commissioning CO and NOx and CO for
19 the cold startup in particular, since those have
20 the highest limits for their various periods.

21 In analyzing what was done for the
22 modeling, and in fact, re-running the model to do
23 that verification, there are several things that
24 should be noted.

25 First that the modeling was performed,

1 did not show any violations for the short-term
2 ambient air quality standards. That the modeling
3 that was performed was conservative on several
4 levels. First, the model that was used is a model
5 that over-estimates emission impacts in complex
6 terrain, which is where we found all of our
7 maximum impacts. So if we were to have gone to a
8 terrain-adjusting model like AIRMOD we would have
9 had much lower impacts than were shown in the
10 analysis.

11 We added a conservative background to
12 come up with the total impact, essentially the
13 worst case number for the hourly or the eight-hour
14 impacts. They were found in central San Jose.
15 Added those to the impacts that were found in
16 hillsides, you know, far away from any of the
17 freeways or other major emission sources.

18 We also made sure that the modeling
19 included the most conservative approach possible
20 for the hourly and the eight-hour impacts,
21 maximizing the potential based on the per-event
22 emission limits. So instead of averaging the 5000
23 pounds over the event, we actually had the model
24 5000 pounds during that first hour to determine
25 the absolute, and perhaps unrealistic, worst case

1 impact that could occur for carbon monoxide for
2 the commissioning event, the 5028 for the cold
3 startup. The entire 480 pounds for the cold
4 startup NOx emissions.

5 And one other issue that should be noted
6 is that dispersion models are conservative by
7 design. They're meant, you know, to be health
8 protective. And they're only approved by EPA and
9 others if they've been shown that they are health
10 protective and do not underestimate impacts.

11 So, in summary, -- no, actually I'm not
12 done with my impact analysis quite yet. Other
13 issues, I guess, that should be stated before we
14 get any further is that the highest impacts, as I
15 noted before, were found in the complex terrain
16 and in unpopulated hills, either Tulare Hill for
17 the NOx, or the hills to the northwest from the --
18 excuse me, northeast from the project site. And
19 that the impacts that actually occur down in the
20 valley areas, the populated areas, including the
21 Santa Teresa area, are considerably less. They'd
22 be between 5 and 10 percent highest impacts that
23 are found in the higher terrain for carbon
24 monoxide, and they'd be about 30 percent to the
25 highest that was found for NOx.

1 So that in these lower terrain, in these
2 populated areas, the numbers are considerably
3 lower and well below the ambient air quality
4 standards.

5 I wanted to also note the impact
6 analysis methodology that we used is consistent
7 with other projects, both in terms of the previous
8 amendment analyses, and just basic analyses we
9 would perform during an AFC or an SPPE process.

10 And in summary, again I'd like to say
11 the analysis methods are conservative and
12 overestimate impacts. That the modeling results
13 show that there were no significant ambient air
14 quality issues related to these changes. And that
15 there would not be a potential to cause an acute
16 air toxics health impact from the project.

17 We'd also like to note that we think it
18 is prudent to increase the short-term
19 commissioning startup and shutdown emission limits
20 so that they do cover the range of emissions that
21 we have seen on previous projects. So that we
22 have limits that can be expected to be attained
23 during the life of the project.

24 Therefore we recommend that you would
25 approve the proposed modification, including the

1 related revisions that I included in my addendum
2 which was included in the information that Mr.
3 Munro forwarded in the analysis.

4 And that ends my summary of the
5 analysis.

6 ACTING CHAIRPERSON PFANNENSTIEL: Thank
7 you. I think before we seek further comments
8 let's just see if there are questions on what we
9 just heard. Commissioner Geesman.

10 COMMISSIONER GEESMAN: Mr. Walters, I
11 think in the middle of your presentation you may
12 have misspoken once. In discussing the
13 conservatism of dispersion models I believe you
14 said that that conservatism tends to underestimate
15 impacts. And I think what you meant to say is a
16 conservative dispersion model would overestimate
17 impacts. Which is it?

18 MR. WALTERS: It would overestimate.
19 I'm sorry if I made that mistake.

20 COMMISSIONER GEESMAN: Thank you.

21 ACTING CHAIRPERSON PFANNENSTIEL: Are
22 there other questions here?

23 COMMISSIONER BOYD: Yeah, excuse me, a
24 question. Am I understanding correctly that the
25 changes that you're recommending and which we did

1 discuss in Committee are a product of the
2 experience of others, including the applicant,
3 with this type of turbine in other applications,
4 as well as based upon advise and/or information
5 from the turbine manufacturer that some of
6 these --

7 MR. WALTERS: I would say --

8 COMMISSIONER BOYD: Go ahead.

9 MR. WALTERS: Sorry if I cut you off. I
10 would say it's more based on actual experience for
11 the turbine type. In the analysis I noted that
12 the specific projects that we looked at to show
13 that the emission levels for those projects, using
14 the same turbine type, would not meet the current
15 limits.

16 In particularly we're looking at the
17 Hermiston plant that Calpine has up in Oregon, and
18 their Sutter plant. And found that both the
19 commissioning levels and startup levels for those
20 plants were higher than the current emission
21 limits. And it would be reasonable to increase
22 those levels to the levels that the applicant was
23 requesting.

24 COMMISSIONER BOYD: We've had to do a
25 lot of this lately. Has the experience base

1 reached the point where we won't see much more of
2 this in the future? That is, the conditions will
3 be established in the initial permitting process
4 based on the experience that is being gained?

5 MR. MUNRO: Yes, we definitely will be
6 using this experience. Part of your question was
7 the manufacturers' estimates, which have turned
8 out to be woefully inaccurate in all of these
9 cases. And that's the reason that we've had to
10 come back, or that the project owners have had to
11 come back and ask for amendments.

12 So, yes, that will be taken care of and
13 taken into account in the siting cases that we're
14 looking at now and future siting cases.

15 MR. WALTERS: I think if you were to
16 review some of the more recent cases you would see
17 that the numbers for the short-term events are
18 higher. For example the Palomar case, which is
19 more recent than this case. The Morro Bay case.
20 They have emission limits that are much more
21 consistent with what is being requested here.

22 So, yeah, we have -- there is a lesson
23 learned that is being applied.

24 MR. MUNRO: I'm going to ask Keith
25 Golden to address that question about how this

1 information is going to be used in the future
2 cases.

3 MR. GOLDEN: My name is Keith Golden;
4 I'm a staff engineer for the Energy Commission.
5 And I just want to address a little bit more about
6 the concern about all these startup amendments.

7 When we first started seeing new
8 projects in about 1997, 1998 using the 7F model
9 turbine, there were about four manufacturers of
10 these turbines. These are a brand new class of
11 turbines that were just entering the market.

12 We asked questions of the applicant and
13 of the turbine vendors as to what they anticipated
14 the startup emissions to be on these turbines. We
15 were one of the first parties in the country to
16 ask this kind of detailed information because we
17 were finding that these startup profiles were
18 going to be fairly long as far as how long they
19 were going to take to do these startups.

20 So we wanted to get a better handle on
21 the emissions. Well, as it turns out, we were
22 getting information directly from the turbine
23 vendors that said this is our estimate as to what
24 we think the startup emission profiles are going
25 to be.

1 And as it has turned out that those
2 estimates were, in many cases, quite inaccurate.
3 So as a learning experience from this, the
4 applicants have come back, of course, and amended
5 their permits. We do have now some data that is
6 coming in from actual operating facilities in
7 California. And we are now going to be evaluating
8 future amendments, which we may in fact see on 7F
9 turbine projects, combined cycle projects, because
10 there are a few that are still out there that have
11 not been built, or are in the process of being
12 built that may have to amend their startup
13 profiles.

14 But we now have some pretty good data
15 based on other turbines that are out there to know
16 whether, in fact, these are good numbers now. And
17 if somebody in the future is going to be proposing
18 a 7F class project, we're going to be looking much
19 more closely as to how they estimate their
20 emissions. We're going to be looking at the data
21 we have now been able to get from these operating
22 projects, and we will question vigorously the
23 applicant if we, in fact, think that these numbers
24 could be inaccurate. And to get a better handle
25 on this to try to avoid future amendments.

1 That also being said, if we see new
2 turbine models that are going to be presented to
3 us, we will be asking much more direct questions
4 of the turbine vendor as to how they came up with
5 the startup profiles or commissioning profiles for
6 these turbines. And not just take, shall we say,
7 at face value data that we get from them that may
8 be rather summarized data. But we will want to
9 dig further into that data to find out how they
10 generated this information and be more comfortable
11 that this data is, in fact, accurate.

12 So we are learning from our experiences.

13 COMMISSIONER BOYD: Thank you.

14 ACTING CHAIRPERSON PFANNENSTIEL: Thank
15 you. Other questions? Commissioner Geesman.

16 COMMISSIONER GEESMAN: If I'm correct, I
17 believe that all of your troubles thus far have
18 been focused on the startup and commissioning
19 emissions. You don't have any reason to question
20 the operating emissions data, do you?

21 MR. GOLDEN: Generally speaking, no. It
22 has all been, or a vast majority of it has
23 centered around the startup and the commissioning
24 aspects of these turbines.

25 When they are up and operating at full

1 load in a normal process they have been pretty
2 much right on to their expected permit levels.

3 COMMISSIONER GEESMAN: Thank you.

4 ACTING CHAIRPERSON PFANNENSTIEL:
5 Anything else from the staff? Let me ask, does
6 Calpine have anything to add to this? We have one
7 public comment after this.

8 MR. HARRIS: Again, very briefly. I'm
9 Jeff Harris on behalf of Metcalf Energy Center.
10 Mike Argentine is the Director of Project
11 Development.

12 I just want to say actually just a
13 couple things briefly. I think the staff analysis
14 is one of the best I've seen. It's very thorough
15 and very detailed, and we agree with the staff's
16 conclusions.

17 Secondly, the only point that I was
18 actually going to make was the one that we've just
19 been talking about, and Commissioner Boyd kind of
20 stole my thunder. This is, by our account,
21 approximately the 14th amendment that the
22 Commission has seen related to these issues.

23 And so I wanted to make the point that
24 there's nothing unique or different about this
25 amendment from a technical or from a public health

1 safety or welfare perspective. You've seen this
2 kind of amendments before, and I think you had a
3 good discussion about that.

4 We'd make ourselves available to answer
5 any questions.

6 ACTING CHAIRPERSON PFANNENSTIEL: Thank
7 you. I don't have any cards from anybody in the
8 audience on this. But I do have one person on the
9 phone. Issa Ajlouny.

10 MR. AJLOUNY: Can you hear me?

11 ACTING CHAIRPERSON PFANNENSTIEL: Yes.

12 MR. AJLOUNY: Okay. I have first of
13 all, you know, the Metcalf Energy Center was a
14 very difficult process because (inaudible) and
15 during the hearing Calpine was asked to have the
16 source testing done, have the power plant tested.
17 That was during the hearing.

18 And I guess what I'm trying to say is I
19 feel like back then when they were doing some kind
20 of source testing, other thing, and by the way
21 some numbers came up high, and their expert
22 witness decided to throw them out because he
23 didn't like the numbers. And he actually stated
24 that in the hearing.

25 You know, it just kind of concerns me,

1 why now. I understand a lot of them are happening
2 now and all that kind of stuff, but I feel that it
3 might have been a little misleading information.

4 And I only start with this comment only
5 because I really feel there should be a hearing to
6 deal with some of these things. Because, in the
7 workshop things were said and no one held liable
8 of what was said, you know. It was just new
9 ambient air numbers are used, and we have no way
10 to cross-examine and see where those numbers came
11 from, or how accurate those numbers are.

12 And if they would have used the original
13 numbers, you know, would they have been over the
14 limit. That question was asked. I can go on and
15 on. So I guess the first part is Texas was one of
16 the examples that Calpine used in the hearing.
17 And I'm sure they knew what kind of emissions were
18 going on during startup, because that was part of
19 the testing that was asked by us as a community on
20 the actual startup emissions and stuff.

21 I don't know how this works. If I state
22 that and you want to respond to that, or do you
23 want me to go through all my issues?

24 ACTING CHAIRPERSON PFANNENSTIEL: Why
25 don't you go through your issues and then we'll

1 get a response. Thank you.

2 MR. AJLOUNY: Okay, thank you. Another
3 one is in topic 4 of the response, the written
4 response from the Energy Commission on this
5 amendment, it states the PM10 would be increased
6 because of the oxidation catalyst. But most of
7 this increase is because of the SO2.

8 And another issue I have is SO2 is going
9 to be increased five times. I don't know why.
10 And it has not been asked in this amendment. But,
11 Commissioners, this might add to some of your
12 concerns, is, you know, are you going to hear more
13 limits that need to be raised during this process
14 of this power plant or other power plants.

15 And what it is, and I don't understand,
16 it's so mysterious, but the Bay Area Air Quality
17 Management District is allowing 1.0 and the CEC
18 has put in there that under one of the conditions
19 of certification it's supposed to be .2. But
20 nowhere is it mentioned that they need to increase
21 this in this amendment, but yet it's assumed that
22 it's going to be 1.0 and it was talked about in
23 the workshop. Because I'm not so technical, I
24 don't understand why it's going to be increased.

25 And then going back to topic 4 of PM10

1 being increased because of the oxidation catalyst
2 and most of this increase is because of SO2. Now
3 SO2 is going to be raised five times.

4 So I don't see analysis of PM10 on this
5 whole amendment, which concerns me.

6 Another, my item three is source
7 testing. I asked for source testing, I guess,
8 because I'm not technical I didn't ask good
9 enough. But the bottomline is Calpine agreed to
10 do source testing at Sutter on the VOCs, and I
11 don't seen any mention that they -- all that's
12 mentioned is it's unfeasible.

13 Well, I feel they should do the VOCs and
14 then they should do source testing on the NOx and
15 CO. But certainly at least the VOCs, since
16 they've already agreed to do it at Sutter. And
17 this is a much more sensitive power plant.

18 I think a few of the Commissioners there
19 today have not been through that process for
20 Metcalf, but it really was a pretty intense
21 process.

22 Another item is the Bay Area Air Quality
23 Management District, I don't understand how this
24 is all put together, who the leading agency is.
25 But I think it would be only wise to at least wait

1 until the final decision, or the final document
2 that comes from the Bay Area Air Quality
3 Management District comes out before the CEC would
4 step out and say, yeah, we assumed that it's not
5 going to take, and make a decision, and then have
6 to come back, which was stated in the -- I think
7 it's stated in the response, stated in the
8 workshop, that, well, if the Bay Area Air Quality
9 Management District changes anything we'll just
10 have to make a modification to come before the
11 Commission again.

12 I don't know. If I was running a
13 business I don't think that would be the kind of
14 business. I would like to know exactly what's
15 going to change, what it's going to be, and make
16 one decision at one time. I don't think two weeks
17 is going to matter much.

18 A couple more items here is one of the
19 things that concerned me, and this is just because
20 of my experience with the Commission and the
21 experience -- I don't know if you realize this,
22 but there was an investigation by a nonprofit
23 organization, a national organization, on
24 whistleblowers. And they actually did an
25 investigation on the process of Metcalf Energy

1 Center's licensing. And interviewed quite a few
2 of your staff members. And basically came out in
3 writing that there was some corruption there and
4 management was forcing staff members to document
5 certain things that they didn't feel comfortable
6 with. That isn't me saying that, that's a public
7 agency that investigated it.

8 And here is another example. Joe Loyer,
9 who seems to be a bright guy, and I'm not knocking
10 Will, he seems to be a bright guy, too, but he
11 also is a contractor. And I just feel there's a
12 little pressure on contractors to come out with
13 what the Commission wants, management. Or if he
14 doesn't then, you know, why would you go back to
15 him and hire him to do more work. I think it's a
16 poor way of, again, doing business.

17 But Joe Loyer was doing a great job.
18 Had a great conversation with him. He put a lot
19 of the data requests out there and then lo and
20 behold, you know, you get an excuse of he needed
21 to leave for a week or two, and now they pulled
22 him off the case. And they hire a contractor. I
23 think that needs to be looked at.

24 And if you're really going to take my
25 comments serious, why don't you ask Joe Loyer to

1 come down right now and make some of his own
2 comments. I'm willing to take a chance on
3 embarrassment here, but I got to believe if you
4 ask him direct questions or any concerns, he might
5 have some other things to say to you.

6 And I think one last thing. Calpine has
7 mentioned in documentation that they want to
8 modify their emissions, which they want to modify
9 their emissions limits, which will reduce the air
10 credits that they've already paid for, but they
11 want to go ahead and get these credits back, you
12 know, back in their pocket. Like they've already
13 given the CEC or whoever they give the credits to.
14 But now they're going to ask to lower their
15 limits, ask for the credits back and re-use them,
16 which I've never heard of before. And I've asked
17 around to other people in other, you know, in the
18 industry, has never heard of that.

19 Those are all my comments as of now.

20 ACTING CHAIRPERSON PFANNENSTIEL: Thank
21 you, --

22 MR. AJLOUNY: I'd like to respond once
23 they've responded, if I have any more questions.

24 ACTING CHAIRPERSON PFANNENSTIEL: Thank
25 you, sir. There are a number of both technical

1 and policy comments that you've offered. Let me
2 first ask Bob Therkelsen if there are comments
3 from the staff on this.

4 MR. THERKELSEN: Excuse me, Madam
5 Chairman, in terms of comments on the policy
6 issues or on the technical issues?

7 ACTING CHAIRPERSON PFANNENSTIEL: Well,
8 I'm actually looking for process comments on -- he
9 raised both policy and technical. And I think we
10 need to respond. Whether we can do so here and
11 now, maybe some you can and others we need to
12 defer.

13 MR. THERKELSEN: Right. In terms of the
14 two policy questions I think he raised were
15 questions about what happened during the
16 proceeding, itself. And secondly, the nature of
17 changing in staff assignments on that.

18 In terms of the proceeding, itself, I
19 actually was the Deputy Director of the Siting
20 Division at that time, and I don't recall seeing
21 the report that he's referring to. I know there
22 were some concerns raised by intervenors on the
23 process. But I can assure you, as the Deputy
24 Director, there were none of the staff that were
25 directed to say or not to say anything in that

1 proceeding.

2 The proceeding had some conclusions
3 based upon staff's recommendation, and that
4 recommendation was based on the entirety of staff,
5 not one individual that may or may not have a
6 different perspective based upon their individual
7 technical area.

8 In terms of the staff assignments I
9 don't know the nature of whether or not there was
10 a change in staff assignments on this case or not,
11 and why that was done. Typically we have changed
12 staff depending upon what workload is, what
13 expertise is, and what the overall needs of the
14 program and the division are. And I think in that
15 case that probably is sufficient unless Terry
16 O'Brien or whatever has more information on this.

17 But the staff is assigned based upon
18 expertise, workload and a number of factors. All
19 of our people, we do not make decisions based upon
20 contractors or permanent civil service staff, and
21 believe me, staff is not directed to say something
22 or not directed to say something in terms of their
23 technical analysis.

24 ACTING CHAIRPERSON PFANNENSTIEL: Thank
25 you. Do we have any response, Mr. Munro,

1 technically?

2 MR. MUNRO: Yes, we do. We're prepared
3 to respond to all of those comments.

4 MR. AJLOUNY: Excuse me, can I interrupt
5 just one second here? I'd like to respond to the
6 first just so we keep this in order.

7 I can email a document right now that
8 came from there. It was in the hearing; it's
9 docketed. Maybe, Steve Munro, you can confirm
10 that you know about this letter? Maybe Mr.
11 Therkelsen doesn't remember it. But the name of
12 the group was PEER, P-E-E-R. I can't remember
13 what it stands for.

14 But that document is definitely in your
15 docket, and it's official, and it was there before
16 the decision was made. I want to make that very
17 clear.

18 COMMISSIONER GEESMAN: Madam Chair.

19 ACTING CHAIRPERSON PFANNENSTIEL: Excuse
20 me a second. Mr. Geesman.

21 COMMISSIONER GEESMAN: I would request
22 that all of us focus our attention to the issues
23 presented by the amendment. There is no value
24 whatsoever in trying to relitigate the original
25 Commission decision in the case, itself. That

1 decision was made some time ago. That is not in
2 front of us today.

3 What's in front of us is this request
4 for an amendment. So I'd ask all the parties to
5 try and rivet in on the issues presented by this
6 amendment, since that's all that's in front of us
7 now.

8 MR. AJLOUNY: And I agree with you
9 wholeheartedly. The only reason I bring that up
10 because I just feel what we're dealing with today
11 was manipulated again by the management of the CEC
12 to get the results they wanted.

13 And again, I challenge you to get Mr.
14 Loyer downstairs and talk to him now, if you want.
15 Or in the next business meeting. I'd like it now
16 just because, you know, maybe he won't get any
17 force on how to respond to certain questions.

18 ACTING CHAIRPERSON PFANNENSTIEL: I'd
19 like to suggest that we get one more round of
20 response, perhaps, from the staff. I know we have
21 one other person who'd like to comment. And then
22 we move forward.

23 I think if there are technical questions
24 still open we can respond perhaps later in writing
25 to them. I don't know that they can be fully

1 explored today at this meeting.

2 Mr. Munro.

3 MR. MUNRO: Yes. I'd like to ask Will
4 to respond to the technical questions that were
5 asked by Mr. Ajlouny. And then I will respond to
6 the process questions.

7 MR. WALTERS: All right. First I'll
8 start with the ambient air quality. Essentially
9 the background concentrations, which I believe was
10 one of the first comments that was raised. And
11 that it was not the original numbers that was used
12 in the siting case.

13 First I want to note that that topic was
14 responded to in topic 3 of our comment response
15 with quite a bit of detail, and why we did what we
16 did for the ambient, which is to give a summary of
17 that response, I'd like to note that essentially
18 staff analysis used a consistent methodology of
19 defining the ambient air quality through the most
20 recent three years of available data.

21 And going back to old data, whether
22 it's, in this case, the data they were asking us
23 to go back to was 1996, or a siting case and they
24 use a 1985. It's a not technically accurate way
25 of going about it.

1 The ambient air quality is what the
2 ambient air quality is, not what the ambient air
3 quality was. So staff looks at it at the time of
4 the analysis to determine what is the current
5 condition in the area. And therefore the numbers
6 are somewhat different because it's four years
7 from the time which the original analysis was
8 performed.

9 Now, to go to the second issue, which,
10 in fact, was even noted to have been topic 4 in
11 our current response, which went into kind of two
12 issues, both the SO2 emission limit and the PM10
13 emission limits.

14 I'll start with the SO2 emission limits,
15 and first I'd like to say that there has been no
16 request to change the SO2 emission limit. The
17 issue with the revision to the District's
18 conditions is actually a moot point because the
19 District is going to be taking that particular
20 addition they put onto their condition 13 out.

21 And that addition, which was actually
22 not included in our staff analysis because it came
23 out after our staff analysis, I actually had to
24 take it out of the addendum that I had processed,
25 because I did get information from Bay Area. And

1 my last communication with the permitting engineer
2 was yesterday. That is the only change they plan
3 to make from their preliminary decision that they
4 completed in February.

5 So, at this point we have nothing in
6 front of us to analyze for SO2. We don't know
7 what any particular change would be in the
8 emission limits. We do know there have been some
9 changes in some other Bay Area projects. But, you
10 know, at this point we don't know what they would
11 be for this project. If there are changes, we
12 will deal with them at the time and address any
13 significance issues or any requirements for
14 mitigation if and when that amendment request is
15 made.

16 The second --

17 MR. AJLOUNY: (inaudible) just because
18 my mind can only handle so much.

19 ACTING CHAIRPERSON PFANNENSTIEL: I'm
20 sorry, I think we need to finish with the staff
21 response and move on. Thank you.

22 MR. WALTERS: The second issue, the PM10
23 emission rates that kind of tail into the change
24 for the SO2. The issue here is really broader in
25 context. Will they be able to meet their PM10

1 emission limits.

2 I think we have enough experience with
3 7F turbines that show with the gas that is
4 available from PG&E that they will be able to meet
5 those limits. We have several rounds of source
6 tests. We really have not seen any significant
7 problems of meeting those at the levels that are
8 typical of the 7F turbines for PM10.

9 And, again, that's using the as-is
10 sulfur content in the Bay Area. So, now any
11 increase in the PM10 is strictly an increase in
12 the actual, but will not affect their ability to
13 meet the limit. They should have a rather
14 significant leeway in being able to meet the limit
15 based on the source test data we've seen.

16 Now, to go down to the next issue, which
17 was source testing, and I think it had to do
18 something with Texas and data that was not used in
19 the original case, and I think, to some extent, I
20 would like to refer to what Commissioner Geesman
21 said, that those issues were dealt with during the
22 original case.

23 Staff's acceptance or non-acceptance of
24 that data happened at that time. We haven't --
25 staff has not changed its opinion on that data at

1 this point.

2 There was another comment on
3 coordination. In terms of the Bay Area
4 coordination, I would just like to note that I
5 have been in contact with the permitting engineer,
6 with the person who did the ambient air quality
7 analysis, as well as the person who was reviewing
8 the ambient air quality data from the station that
9 is currently operating, I believe, in Los Poseos
10 Park. I may be getting the pronunciation wrong,
11 but it's in that general area.

12 So, I have been in contact with the
13 District. And as I noted, the District does not
14 intend to make any changes to its preliminary
15 decision. And that all of those changes that were
16 required were included in my addendum, and are in
17 Steve's document that provides all of the final
18 changes.

19 And I believe the --

20 MR. MUNRO: Reduction of NOx, I think,
21 is what he was referring to.

22 MR. WALTERS: Yeah, okay, there's one
23 additional technical issue, the reduction in NOx.
24 Just to give you a regulatory framework, changing
25 emission limits and being able to get ERCs back is

1 allowed in the District rules. Whether it's done
2 now, which they haven't actually started emissions
3 yet, so it's actually outside of the rule that
4 would allow it after they started operation.

5 So, yes, it is allowed. So they are
6 fully within LORS for making this request. And
7 again, it will be able to show compliance with the
8 lower limit, that every hour the facility is on
9 they'll have continuous emission monitoring
10 determining the actual NOx emissions.

11 MR. MUNRO: Yes, --

12 ACTING CHAIRPERSON PFANNENSTIEL: Thank
13 you. Mr. Munro, you -- last comment.

14 MR. MUNRO: -- I wanted to address the
15 process questions that were posed.

16 The first one that I noticed is why not
17 hold an evidentiary hearing in this case. That
18 was covered rather extensively in our topic 6
19 response, in our response to comments. And let me
20 just go over and summarize that for you.

21 In the other 15 cases where we've had
22 similar amendments, we've had no workshops
23 conducted. We sent the staff analysis out and
24 accepted comments, and usually received just a
25 few.

1 In this case, however, we know that the
2 community is sensitive, and we went ahead and
3 provided for a staff analysis for them to review,
4 and then a workshop for them to ask questions and
5 comments on. And then also the opportunity to
6 provide written comments.

7 So this is well beyond both CEQA
8 requirements and our own requirements, the way
9 we've conducted this amendment. Because we did
10 recognize the sensitivity.

11 In this particular case the staff
12 analysis came out really very clear and
13 unambiguous in its conclusions. We've addressed
14 all of the questions. None of the questions are
15 hanging or left unanswered.

16 And basically we believe that an
17 evidentiary hearing would not be warranted in this
18 case.

19 ACTING CHAIRPERSON PFANNENSTIEL: Thank
20 you. Thank you, sir, on the line.

21 MR. AJLOUNY: I'm not done. Basically,
22 you know, I'm going to give you an answer, and
23 then (inaudible). And I just, I think there needs
24 to be a few more things brought out here.

25 ACTING CHAIRPERSON PFANNENSTIEL: Well,

1 I appreciate your concern, and I believe that the
2 record on this proceeding has attempted to
3 respond. We have another person to comment, and
4 then I believe that the Commission needs to act on
5 this matter.

6 So, thank you for calling.

7 MR. AJLOUNY: Well, I totally disagree
8 with your response to me, Commissioner. I'd
9 really like to clarify a few things that were
10 misinterpreted of what I said.

11 ACTING CHAIRPERSON PFANNENSTIEL: I
12 don't know whether you have responded in writing
13 in every instance here. But I believe that we
14 have, without holding a full evidentiary hearing
15 at this point, I think we need to move on in this
16 instance.

17 So, I want to say that I thank you for
18 your call in. Now, --

19 MR. AJLOUNY: Well, can I just make one
20 more comment.

21 ACTING CHAIRPERSON PFANNENSTIEL: Yes,
22 of course.

23 MR. AJLOUNY: The emission, you know, we
24 find out about all these startup emissions. And,
25 you know, so we get this amendment. Well, can't

1 we use the same experience that Will was talking
2 about on the other power plants on the SO2
3 emissions? Why should there be some room to come
4 back and say, oh, now we want to increase the SO2
5 to a different number?

6 I understand now that the Bay Area Air
7 Quality Management District is going to lower that
8 to .2. But that doesn't change the fact that the
9 applicant can't come back and say, oh, we need to
10 change this now.

11 I think that they, you know, they should
12 be on the record as saying they have no intention
13 to change it, or promise not to change it, or deal
14 with that, too, because that has a big impact.
15 And I just think that this is being piecemealed
16 together to manipulate the system to get through
17 these things so it doesn't look like a high impact
18 in the neighborhood.

19 ACTING CHAIRPERSON PFANNENSTIEL: Thank
20 you. We have a request to speak from Mr. Sarvey.

21 MR. SARVEY: Thank you, Commissioners.
22 Bob Sarvey. Statement made by Mr. Harris here,
23 I've been involved in probably three or four of
24 these amendments to increase CO and NOx. I have a
25 little bit of a handle on it.

1 This case is unique. And the reason
2 that this case is unique in this amendment is
3 because in order for this amendment to go through
4 the CO -- background CO level that was approved in
5 the evidentiary hearing and in the final decision
6 and the FDOC has been changed to make this project
7 comply, and not violate the eight-hour CO
8 standard. So I think that's definitely a unique
9 situation. In no other amendment have I seen
10 background levels changed. That's just the first
11 comment I want to make.

12 COMMISSIONER GEESMAN: Madam Chair.

13 ACTING CHAIRPERSON PFANNENSTIEL:
14 Commissioner Geesman.

15 COMMISSIONER GEESMAN: Changed or
16 updated?

17 MR. SARVEY: Changed.

18 COMMISSIONER GEESMAN: And is changed
19 the same as updated?

20 MR. SARVEY: I can give you the exact
21 numbers if you'd like.

22 COMMISSIONER GEESMAN: I understand you
23 can, and it's covered in the written response that
24 the staff prepared, but I think that you would
25 have us use outdated background numbers.

1 MR. SARVEY: No, no, no, as a matter of
2 fact, I would have you use updated if you want to
3 change it. And, in fact, CO and NO2 are both
4 localized phenomenon, so you cannot predict the CO
5 and NO2 background levels at that project site.

6 And, in fact, you do have a monitoring
7 station that is next to that project site now,
8 which is another thing that's very unique about
9 this project.

10 COMMISSIONER GEESMAN: Certified or
11 uncertified?

12 MR. SARVEY: It is not certified.

13 COMMISSIONER GEESMAN: Thank you.

14 MR. SARVEY: Well, in any event, the
15 original license for this project included 37
16 intervenors and 19 days of evidentiary hearings.
17 And during the entire proceeding the public was
18 assured that the startup and shutdown emissions
19 and all estimated emissions from this project were
20 conservative estimates.

21 Now, before the plant even has its first
22 fire the applicant is requesting a 9000 pound
23 increase in CO emissions, and a 4000 pound
24 increase in NOx emissions.

25 You can forgive the public when we

1 question the assurances of staff and applicant
2 that the proposed emissions and impacts from this
3 amendment are conservative.

4 We would request an evidentiary hearing
5 to establish, in fact, the public is protected.
6 As I said before, the CO eight-hour impact from
7 this project amendment, combined with the eight-
8 hour CO limit that is contained in the final
9 decision and the FDOC would violate the eight-hour
10 CO standard.

11 Staff and applicant have proposed to
12 change the eight-hour CO background that was
13 established under evidentiary scrutiny stating
14 that their new background level is conservative.
15 Pardon me again when I cringe when I hear the word
16 conservative. This is exactly what the startup
17 and shutdown emissions in the original license
18 were characterized as, conservative.

19 We were assured that in the original
20 emission limits in this license were conservative,
21 and now again we're being asked to accept that
22 they're conservative. This license still contains
23 a fuel sulfur limit of .2 grams per 100 standard
24 cubic feet. Every other license that Calpine owns
25 in the Bay Area is being amended to increase that

1 to .33 or higher. The original impact, PM10, 2.5
2 impact in this project was over 9 mcg/cubic meter,
3 and that was before we had established PM2.5
4 standards.

5 So I believe that this project applicant
6 is going to be back; and they are going to have to
7 amend that limit. They're doing it all over the
8 Bay Area.

9 Now, when you figure that additional
10 fuel sulfur content, and you add it to the over 9
11 mcg/cubic meter of PM2.5 from this project that
12 was determined in its original license under
13 evidentiary scrutiny you can see we have a serious
14 problem.

15 So, once again, I would request that
16 this amendment be the subject of evidentiary
17 scrutiny, and we be allowed to offer experts to
18 rebut what's being told here. This is not the
19 forum where we can do that. We can't bring our
20 people in, and we can't show that these estimates
21 are wrong.

22 So essentially once again, I don't think
23 that any assurances from staff or applicant make
24 the public comfortable. These are conservative
25 estimates. And we would like to see them

1 confirmed under evidentiary scrutiny with people
2 under oath and with the proper experts that
3 represent the public on hand.

4 Thank you.

5 ACTING CHAIRPERSON PFANNENSTIEL: Thank
6 you, Mr. Sarvey. Are there further comments?
7 Further discussion by the Commission?

8 COMMISSIONER GEESMAN: Madam Chair, the
9 Siting Committee took this up and believes that we
10 should approve the amendment. There have not been
11 any new technical issues raised today that have
12 not been addressed in the staff written response.

13 The staff did conduct a public workshop;
14 it did develop a written document. It did respond
15 in writing to the comments made at the workshop.
16 It afforded Mr. Sarvey and the experts that he
17 refers to, but has not named, the opportunity to
18 come here today and appear before us.

19 I think we've all been in siting cases
20 enough to know that our formal adjudicatory
21 hearings are best left to issues that are
22 substantially contested and can justify the level
23 of cross-examination and additional review that
24 the adjudicatory process is designed for.

25 This is an amendment for a license where

1 neither our staff nor the Bay Area Air Quality
2 Management District have found there to be any
3 significant impact. It's a plant that is
4 scheduled to begin operation in a little more than
5 100 days from now, and one that I think we will
6 need this summer.

7 So I would recommend that we approve the
8 amendment today. And I so move.

9 COMMISSIONER BOYD: Madam Chair, I'll
10 second the motion and I just want to add that I
11 really did think in this case, from having read
12 all this material, the staff kind of went the
13 extra mile in addressing the questions. Because
14 this is a community that's been quite concerned
15 about the power plant siting case. And we do have
16 the dilemma nobody wants a power plant not only in
17 their backyard, but even in the general vicinity.

18 In any event, I think the staff has
19 addressed the issues, and thus my second. Thank
20 you.

21 ACTING CHAIRPERSON PFANNENSTIEL:
22 Motion, Commissioner Geesman; second, Commissioner
23 Boyd. Further discussion?

24 All in favor?

25 (Ayes.)

1 ACTING CHAIRPERSON PFANNENSTIEL:

2 Carried, four to nothing. Thank you.

3 Item 4, the Los Esteros Critical Energy
4 Facility. Commission consideration and possible
5 adoption of the Los Esteros Critical Energy
6 Facility II, phase 1 Presiding Member's Proposed
7 Decision. Mr. Bouillon.

8 MR. BOUILLON: This matter is before the
9 Commissioners for possible adoption of the
10 Presiding Member's Proposed Decision in the Los
11 Esteros case.

12 Los Esteros Critical Energy Facility LLC
13 is a wholly owned subsidiary of Calpine, the
14 applicant in this matter. And the purpose of this
15 relicensing, or recertification is to relicense a
16 plant that was approved by this Commission in 2001
17 -- 2002, excuse me, to run for a three-year period
18 under emergency provisions adopted by the
19 Legislature, I believe, in 2001.

20 That license is expiring. Calpine,
21 through its subsidiary, has filed an application
22 both to relicense the present plant as a simple
23 cycle plant, and to convert it to a combined cycle
24 operation.

25 The proceedings have been bifurcated to

1 deal with the relicensing first, and then with the
2 conversion process. The PMPD in this case that
3 we're asking you to adopt deals only with the
4 single cycle plant.

5 We have prepared an errata to the
6 Presiding Member's Proposed Decision, and there is
7 one small mistake in the errata in that a word on
8 page 3 is misspelled. I don't think I need to
9 call the Committee's attention to that detail.

10 But there is an additional item under
11 the introduction to the errata. I think the
12 errata has been provided to each of you.
13 Beginning on page 1 at the bottom of the page, the
14 last two lines, that paragraph is incorrect at its
15 end. And I'd like to read the entire paragraph
16 into the record with the correction at the end of
17 it, because it raises a point that I will discuss
18 briefly.

19 One of the comments by CARE, who is an
20 intervenor in this matter, concerns some alleged
21 damage by Calpine during the original construction
22 of the power plant to a bicycle path built in the
23 Caltrans right-of-way. Ms. Lucky, who is a member
24 of a bicycle coalition in Silicon Valley offered
25 some insights into this matter.

1 That issue was raised in a March 7, 2005
2 letter to the Energy Commission from the Silicon
3 Valley Bicycle Coalition. However, no party
4 offered any evidence on this issue at the
5 evidentiary hearing.

6 Nevertheless, if the damage resulted
7 from project construction, it should be corrected.
8 The Committee encourages the applicant to work
9 with the affected parties to repair the damage
10 within the near future, or the issue will be made
11 a part of the record in phase 2 of these
12 proceedings.

13 And the Committee has also raised the
14 issue with the compliance staff to see if
15 something can be done.

16 And the reason I point that out to the
17 Commission at this point is that this morning I
18 became aware of a petition filed by CARE to reopen
19 the evidentiary hearing to deal with the bicycle
20 path issue. I was not served -- the Hearing
21 Office was not served with a copy of that
22 petition, but I was made aware of it by Chairman
23 Keese's Advisor this morning about 9:00 a.m.

24 I hastily met with the Committee,
25 particularly Commissioner Pfannenstiel, and it was

1 decided that that petition was going to be denied.
2 The reasons for that denial are that CARE filed a
3 petition to intervene in this case on November
4 21st of last year. Actually it was dated November
5 21st, it got filed on the 22nd. That was also the
6 day of the prehearing conference in this matter
7 prior to the evidentiary hearing.

8 That is also prior to the letter written
9 by Senator Figueroa to the Commission that CARE
10 alleges had they been aware of that letter they
11 would have brought it up at the preconference
12 hearing. The problem is it hadn't been written
13 yet. And Mr. Therkelsen's reply wasn't written
14 until December 21st.

15 I mention those dates because at the
16 time the Committee granted CARE's petition to
17 intervene in the matter they did so with the
18 understanding and the agreement by Mr. Sarvey on
19 behalf of CARE that they would take the case as
20 they found it, and they would raise no issues
21 other than those listed in their prehearing
22 conference statement, which did not deal with a
23 bicycle path in any form, shape or manner. They
24 dealt primarily with air quality and issues
25 surrounding air quality.

1 The evidentiary hearing was held on
2 December 6th, and the matter was not raised at
3 that time, either.

4 For those reasons the Committee decided
5 to deny the petition to reopen the hearing. That
6 order has not yet been presented since that is
7 only about an hour old, that decision. And I
8 simply have not had the time to prepare it for the
9 Committee's signature.

10 With that in mind, the applicant is
11 here, the staff attorney is here and Mr. Sarvey
12 has some comments as an intervenor on behalf of
13 CARE. But we would offer that decision, as
14 modified by the errata, for adoption.

15 ACTING CHAIRPERSON PFANNENSTIEL: Thank
16 you, Mr. Bouillon. Staff has comments?

17 MR. RATLIFF: With regard to the bicycle
18 trail, the -- oh, I'm Dick Ratliff, counsel for
19 staff, -- sorry. Staff has had conversations
20 since the most recent Committee hearing with the
21 City of San Jose and with Calpine in an effort to
22 try to find a resolution of that issue.

23 There is some difficulty, I think, in
24 resolving it inasmuch as the City is the owner of
25 the bike trail. Apparently the bike trail lies on

1 a right-of-way that is owned by Caltrans. And
2 it's absolutely unclear which of several parties
3 is responsible for the damage to the bike trail.

4 So, it's our understanding that Calpine
5 wants to work cooperatively to try to work to find
6 an apportionment for any damages to the bike trail
7 and to pay for it. And the City is currently
8 working up a cost estimate and trying to find out
9 who they have to get permission from to work on
10 the bike trail.

11 We hope it will be resolved in the near
12 future. And I think staff will be, I hope that we
13 will be more attentive to making sure that it does
14 get resolved in the near future.

15 If you have any further questions I
16 think Mr. Worl has spoken with the City of San
17 Jose on the issue.

18 ACTING CHAIRPERSON PFANNENSTIEL:
19 Applicant.

20 MR. WHEATLAND: Good morning, I'm Gregg
21 Wheatland, attorney for the applicant. And since
22 I have the mike, I'd like to just add my own
23 personal congratulations to Bob for nearly 30
24 years of distinguished public service. We both
25 began our professional careers here at the

1 Commission, working on the first project was
2 PG&E's proposal for repowering of the Potrero
3 Power Plant. Well, Potrero is still around, but
4 we have accomplished so much more over those
5 years. And I think Bob should be very proud of
6 his service to the Commission and to the state.

7 As to the application that's before you
8 I'd like to ask Mr. Tetzloff to briefly comment.

9 MR. TETZLOFF: Yes, my name is Rick
10 Tetzloff with Calpine. And I'd first like to just
11 support the statement that Mr. Ratliff made about
12 the bike path.

13 There have been several other parties
14 that have used that path, and we're actively
15 working with the City and Caltrans to get it
16 resolved. And we're fully prepared to contribute
17 our fair share to the repair.

18 Secondly, we also fully support and
19 agree with the findings in the PMPD and the
20 errata. And would recommend that it also be
21 approved.

22 And lastly, I'd like to thank the
23 Committee for all their time and efforts in
24 insuring that this facility continues to help meet
25 the growing energy demands in California.

1 Especially in what's shaping up to be another very
2 tight year of energy supply.

3 We'd also like to thank the CEC Staff,
4 especially Mr. Worl and lead counsel, Mr. Ratliff.
5 We've had our share of disagreements and I suspect
6 that will continue with phase 2. But their
7 leadership in dealing with contentious issues
8 constructively and with the highest integrity is
9 the primary reason we've been able to come to
10 agreement, or at least compromise on every area
11 for the phase 1 licensing without a single issue
12 going to adjudication.

13 And we look forward to continuing that
14 level of cooperation in the phase 2 proceeding.
15 Thank you.

16 ACTING CHAIRPERSON PFANNENSTIEL: Thank
17 you. Mr. Sarvey.

18 MR. SARVEY: First I'd like to give you
19 a handout from the Silicon Valley Bicycle
20 Coalition if I could, please.

21 ACTING CHAIRPERSON PFANNENSTIEL:
22 Certainly.

23 MR. SARVEY: The Silicon Valley Bicycle
24 Coalition asked me to provide you with this
25 handout. And the picture there is a bicyclist

1 whose bike has broken down in the rubble before
2 the power plant. And he's on a cellphone calling
3 for help.

4 So they just wanted to let you have
5 that. And their comments are: Members of the
6 Silicon Valley Bicycle Coalition have found
7 themselves going before the California Energy
8 Commission in their attempt to get a condition of
9 fixing the path made part of the permit that
10 Calpine is seeking for phase 2 project for the Los
11 Esteros after being unsuccessful at getting the
12 path restored as a punchlist for the phase 1
13 project.

14 We filed the motion. I don't know if
15 the Commissioners have had an opportunity to
16 review it. But the November 24, 2004 letter from
17 Senator Figueroa is attached. And we feel that
18 this item should have been docketed, you know, --
19 there's some due respect here -- the item should
20 have been docketed, distributed to the proof of
21 service list and it was not.

22 Had it been, we would have been aware of
23 this issue. In fact, the Silicon Valley Bicycle
24 Coalition had sent a letter early on that was not
25 docketed until February 2nd, which is also

1 attached. They also have a third letter which the
2 errata refers to, dated March 7th. But, in fact,
3 this issue had been before the Commission for a
4 considerable amount of time, but in fact, it had
5 not been docketed. No one was entirely aware of
6 the situation, including the Committee itself.

7 At the PMPD conference I presented some
8 of these documents so I know the Committee's aware
9 of that.

10 We feel that, you know, because of the
11 docketing procedures that weren't followed by
12 Energy Commission regulations that the Silicon
13 Valley Bicycle Coalition and CARE have been
14 prejudiced in this item and we would like to
15 reopen the record. And we made that request, and
16 we make that request again to the full Commission.

17 ACTING CHAIRPERSON PFANNENSTIEL: Excuse
18 me, Mr. Sarvey. Let me make just a comment here.
19 I know that the Committee was made aware of the
20 issue very recently, and that we received the
21 request. I saw it by email last night, for the
22 first time, to reopen the record.

23 I think the point is that as we're
24 acting today, this isn't on the record in the
25 proceeding. I speak for the Committee in saying

1 that we support the resolution of this issue. And
2 would hope that we can help it get resolved
3 outside of the proceeding.

4 MR. SARVEY: That's exactly my point,
5 Madam Chairman, had the proper procedure been
6 followed for docketing and serving this issue
7 would have been part of the evidentiary hearing.
8 And it was not.

9 We feel that the Silicon Valley Bicycle
10 Coalition has, for two years, been exposed to
11 dangerous levels of destruction on their bike
12 path. And, in fact, as you can see from this
13 picture here, that damage has occurred. And we're
14 hoping that further bodily injury doesn't occur
15 and further damage. These are very expensive
16 bicycles, and we feel Calpine, at this point, and
17 the Energy Commission are legally responsible at
18 this point.

19 So we would encourage you to reopen the
20 record and take that evidence, and have that
21 bicycle path fixed one way or another. And like I
22 said, we'd like to have the full Commission decide
23 on that. And once you've made that decision I can
24 move on with my other issues with the PMPD.

25 ACTING CHAIRPERSON PFANNENSTIEL:

1 Commissioner Geesman.

2 COMMISSIONER GEESMAN: Well, I guess I'd
3 observe from a practical standpoint, if, in fact,
4 responsibility for the damage has not yet been
5 established or distributed between the various
6 parties, beyond the version that the parties move
7 forward to resolve the matter, and to repair the
8 path, and beyond referring this to our compliance
9 staff, what do you think we would do had this
10 matter been brought before the Committee in its
11 first public hearing?

12 MR. SARVEY: We would bring the
13 representatives from the Silicon Valley Bicycle
14 Association that -- Coalition, that have been
15 present, did see the path damage, as our
16 witnesses. And they contend that Calpine is the
17 one that damaged this path.

18 Calpine would have presented their
19 witnesses. And the Committee would have made a
20 decision on it. And that's what we were asking.

21 COMMISSIONER GEESMAN: So what you're
22 looking for then is for the Commission to
23 interpose itself in determining who, in fact, is
24 responsible for that damage?

25 MR. SARVEY: No. In fact, I'm asking

1 the Commission to mitigate the significant impact
2 from a power plant, which is their --

3 COMMISSIONER GEESMAN: Well, I
4 understand that --

5 MR. SARVEY: -- responsibility under the
6 Warren Alquist Act.

7 COMMISSIONER GEESMAN: I understand
8 that.

9 MR. SARVEY: That's what I'm asking for,
10 Mr. Geesman.

11 COMMISSIONER GEESMAN: But what I'm
12 trying to determine from a practical standpoint is
13 precisely what remedy is it that you're looking to
14 this Commission to provide, which it hasn't just
15 indicated its intent to provide.

16 MR. SARVEY: I'm looking for a condition
17 of certification that guarantees that within 30
18 days of this license that that bicycle path's
19 repaired.

20 As I said before, these people have had
21 to endure this for over two years. As you see,
22 they've even dragged in Senator Figueroa. I think
23 that's pretty substantial muscle. And I don't
24 think that it should be ignored. That's just
25 basically how I feel.

1 ACTING CHAIRPERSON PFANNENSTIEL:

2 Commissioner Boyd.

3 COMMISSIONER BOYD: Well, one, I don't
4 think it's fair to say we're ignoring it. At
5 least certainly not today. And number two, I
6 heard the applicant indicate a willingness to
7 participate in a repair. I've heard the
8 contention that fixing the total responsibility is
9 as of yet unresolved. That apparently possibly
10 others in the area may have some liability.

11 I've heard the Hearing Officer add
12 language in the errata that says that the Energy
13 Commission does have, you know, wants to see it
14 fixed. And if it's not fixed in a timely way,
15 it'll be a consideration in phase two of this
16 process.

17 Recognizing we can't go back in time, do
18 you think that's a reasonably fair resolution of
19 the issue today? Or you do not believe that
20 that's fair?

21 MR. SARVEY: I believe the Silicon
22 Valley Bicycle Coalition is being pressed by four
23 or five different sides, the City of San Jose,
24 Caltrans, PG&E and Calpine, and essentially
25 they're helpless in this matter, and I'm just

1 looking for the Commission to help them out and
2 let's get this done before somebody gets seriously
3 hurt and sues the Commission, the State of
4 California, Calpine and whoever. That's the
5 resolution I'm looking for.

6 I think the Commission makes that
7 commitment, I believe Calpine, as a good neighbor,
8 should just automatically accept the condition.
9 But that's just my opinion.

10 ACTING CHAIRPERSON PFANNENSTIEL: Thank
11 you. Do you have other comments, Mr. Sarvey?

12 MR. SARVEY: Yes, I do. The errata
13 states that the Air District appeared on the
14 request of the Committee. In fact, the Air
15 District appeared because we filed the motion
16 under section 1744(c) which requires the CEC to
17 have the Air District present at evidentiary
18 hearings.

19 The issue that we wanted to clarify is
20 the current standard for best available control
21 technology, which the Bay Area Air Quality
22 Management District confirmed is 2.5 ppm for NOx.

23 And I have our petition here to request
24 the appearance of the Bay Area, but I don't think
25 it's necessary at this time to show it to you.

1 We introduced an exhibit from the
2 District's website at the evidentiary hearing that
3 we retrieved from the internet, which the decision
4 stated was not authentic and was not part of the
5 complete document.

6 This issue is listed as exhibit 5. This
7 issue could have easily been resolved had the
8 Committee required the Air District to be present
9 at the evidentiary hearing, as section 1744(c) of
10 the rules of practice and procedure required.

11 At the PMPD conference the District
12 authenticated our exhibit 5; as did our submission
13 to the Committee, docket number 33006 also did,
14 which was ignored in the decision.

15 We'd like to have the decision reflect
16 that we were correct on this matter.

17 Unfortunately, the Committee chose to
18 ignore our offer of proof which required us to
19 file a motion and request the presence of the Air
20 District. The Air District confirmed that 2.5 ppm
21 is the correct best available control technology
22 for new application to construct for the District.

23 The District also explained that unlike
24 Energy Commission, this is not a new application
25 for them. They are simply amending this

1 application.

2 We believe that the CEC is required to
3 comply with all LORS at the time of licensing.
4 And that 2.5 ppm for NOx is, in fact, the LORS
5 that should be applied to this project as a new
6 application.

7 We also believe that the binding
8 agreement between the CEC and the applicant and
9 the people of the State of California under the
10 expedited review provisions of section 25552
11 requires a project to adopt BACT upon
12 recertification.

13 The PMPD insists that the legislative
14 history of section 25552 clearly states that this
15 project would not have to adopt BACT upon
16 recertification as a peaker plant. We believe
17 that issue is subject to adjudication.

18 Mr. Ratliff clearly dispelled that myth
19 at the PMPD conference, and I would like -- you
20 know, I would like the Commissioners to
21 acknowledge that. That there is no language in
22 the legislative history of section 25552 that
23 clearly states that this project should not be
24 adopting BACT that 's the current LORS at this
25 time.

1 Also, in the terms of energy resources,
2 this project is the first peaker project to my
3 knowledge that has been certified for 8760 hours.
4 And since it consists of four LM Sprint 6000
5 turbines, I would like to hear from Commissioner
6 Boyd on that issue.

7 COMMISSIONER BOYD: What would you like
8 to hear from me?

9 MR. SARVEY: I would like to hear that
10 the extensive discussions we had in the MEGS
11 project about 2 LM6000s that could potentially be
12 a waste of natural gas, when this project's gas is
13 being paid for by the ratepayers of the State of
14 California through a DWR contract, and I think
15 this is the same situation as the MEGS project.
16 And I think that these turbines should be limited
17 to 5000 hours or some sort of arrangement like we
18 had in the MEGS project.

19 I think that that's appropriate. And as
20 I said, I don't ever recall a Commission decision
21 where a peaker plant, much less four turbines, had
22 been licensed for 8760 hours. I believe that the
23 title Energy Conservation Commission sort of
24 requires some sort of application of that.

25 COMMISSIONER BOYD: Okay, well, I didn't

1 want to respond just now because I want --

2 MR. SARVEY: Okay, thank you.

3 COMMISSIONER BOYD: -- when you're done
4 I want to hear the staff's comments on this.

5 MR. SARVEY: I also would like to point
6 out that three month ago we filed a petition to
7 the full Commission, because when we originally
8 filed our application for intervention and
9 financial hardship we were denied financial
10 hardship.

11 And then three months ago we filed the
12 petition to the full Commission to rule on that
13 issue. And three months have passed and as Mr.
14 Chamberlain knows, I've had some problems getting
15 the Energy Commission to respond to my
16 submissions. And with the docketing problems
17 involved in this particular case, it's making it
18 extremely hard to participate.

19 And as you know, I have a 60-hour-a-week
20 job, so this is not something that I just do
21 fulltime or get paid for. So, I'd just like a
22 little cooperation from the Commission. That's
23 all I'm asking. Thank you.

24 ACTING CHAIRPERSON PFANNENSTIEL: Thank
25 you. Response from staff?

1 MR. RATLIFF: Dick Ratliff, staff
2 counsel. I assume when you say you want a
3 response from staff, you want a response with
4 regard to BACT?

5 ACTING CHAIRPERSON PFANNENSTIEL: I
6 think there are two items --

7 MR. RATLIFF: And --

8 ACTING CHAIRPERSON PFANNENSTIEL: -- two
9 items that are up for response. One is the BACT,
10 and the other is the limitation on the number of
11 hours of operation.

12 MR. RATLIFF: Right, okay. The statute
13 in question is section 25552 of the Public
14 Resources Code. It is a provision that was
15 enacted in 2001 which provided the four-month
16 process for peaker facilities that would be
17 converted to combined cycle facilities after their
18 temporary license, or before their temporary
19 license expired. So these would be three-year
20 licenses.

21 The statute in its original form
22 required that that conversion take place or else
23 that the facility be shut down. The statute also
24 required that any facility which received such a
25 license incorporate best available control

1 technology, as that term of art is used by the Air
2 Districts.

3 And I think that was out of concern for
4 the fact that in 2001 during the emergency process
5 some facilities were actually licensed without
6 BACT requirement on a temporary basis.

7 This facility, which is the only four-
8 month project that actually received a license and
9 was built, received such a license, incorporated
10 BACT, which at that time was 5 parts per million.

11 It is now back for recertification, and
12 the point that Mr. Sarvey is making is that the
13 Air District's BACT requirement has, in the
14 meantime, been lowered to 2.5 parts per million.

15 Mr. Sarvey, I think, is suggesting or
16 arguing that this recertification of the license,
17 something which was added to the statute after it
18 was originally enacted, that recertification
19 requires that the newest BACT requirement be
20 applied. And that would, of course, involve
21 actually changing the physical components in the
22 existing facility.

23 There is nothing in either the statute
24 or in its legislative history to support such an
25 interpretation. In fact, I think it's fair to say

1 that it really wasn't contemplated or addressed at
2 all if one looks at the legislative history of
3 that statute. But there may be very strong
4 practical and public policy reasons for not
5 accepting that argument.

6 And certainly, the Air District, in the
7 application of its own regulations, would not
8 require an existing facility to go back and
9 retrofit because it changed its BACT requirement.

10 With regard to the efficiency issue the
11 staff has not required any limitation on the
12 number of hours for this peaker to run. It has,
13 however, adopted the requirements of the Air
14 District which set a rolling 12-month limit on the
15 emissions that the facility can emit, which
16 effectively -- and CARE, in its petition, has
17 acknowledged this -- effectively limits the
18 operating hours of the facility to far below those
19 of running full time.

20 And, in fact, the profile of this
21 facility, if you look at the profile of its use up
22 to this point, has been that of a peaker facility,
23 which has operated fewer than half of the hours of
24 the year.

25 We expect that that would still be the

1 case. And if it isn't the case, we expect that
2 they would probably exercise the license that they
3 are seeking currently for a combined cycle
4 facility. Economics would seem to support that.

5 If you have any further questions I hope
6 I can answer them. Or perhaps the applicant might
7 also answer them.

8 COMMISSIONER BOYD: Well, I want to let
9 Mr. Sarvey know that I was concerned about this
10 issue, and did dig into this a little bit, and
11 learn that the plant has not run a lot.

12 Secondly, I want the staff to comment on
13 this, but I understand that the real effect of
14 this might be a limit of about 4300 hours a year?

15 MR. RATLIFF: Well, I don't -- I would
16 caution to say that --

17 COMMISSIONER BOYD: I mean that was the
18 understanding I had coming into this hearing that
19 made me feel comfortable that --

20 MR. RATLIFF: Yeah, staff did not
21 calculate the number for the record. But
22 informally they have calculated it, and they've
23 calculated it to be less than 5000 hours per year,
24 which is exactly, ironically, the cap that CARE
25 suggests would be appropriate, so.

1 COMMISSIONER BOYD: I guess I would just
2 say that, unlike a lot of people today, but most
3 of us up here, put a lot of faith in the staff's
4 calculations and their statements. And came in
5 here thinking that okay, I was, you know, I was on
6 the original siting case, or at least I picked up
7 from a previous Commissioner who left the
8 Commission. And in any event it did bother me
9 that we're here recertifying a peaker that had
10 very strong conditions about it must convert. But
11 that's phase 2 of this process. I was worried
12 about the hourly limits and came into this forum
13 today reasonably satisfied that in effect there is
14 a limit there that will protect the public's
15 health.

16 So I haven't heard anything different
17 this morning to change my opinion. But I would
18 say Mr. Sarvey raised a good point; it's a fair
19 point that he made.

20 ACTING CHAIRPERSON PFANNENSTIEL: Mr.
21 Wheatland, does the applicant have anything else
22 to respond on this to the issues raised by Mr.
23 Sarvey?

24 MR. WHEATLAND: No. We concur
25 completely with the comments by Mr. Ratliff, both

1 as to the applicable law and the state of this
2 evidentiary record.

3 ACTING CHAIRPERSON PFANNENSTIEL: Now,
4 there is one member of the public, William
5 Garbett, who is on the phone on this subject.

6 MR. GARBETT: -- like to make on the
7 PMPD. The first is, is the CEQA procedures are
8 clearly inadequate because permit streamlining, by
9 the state action, has not been incorporated in any
10 of the CEQA parallel events of the Commission.

11 Also is as far as the air quality that
12 was previously discussed by Mr. Sarvey, one of the
13 things is had the plant just went to a straight
14 re-licensing for a phase 2 there would be no
15 problem. But, indeed, you have a quote "new"
16 license for phase 1, which brings BACT to the
17 forefront as best available technology.

18 You also have the no-project alternative
19 under CEQA which has not been dealt with because
20 the no-project alternative under CEQA actually
21 falls back to a termination of the previous
22 license, which goes and requires a shutdown plan
23 be filed with the Commission. And this has not
24 been done. And that is very material in every
25 respect.

1 Also there are other issues, for
2 instance what type of power transformation takes
3 place. One of the things is is in the original
4 proceedings everyone was insistent that it go no
5 higher than 115 kV and be routed directly to the
6 PG&E substation.

7 The reason that we did that is basically
8 to not allow Silicon Valley Power to bypass ISO on
9 any upgrade to a higher voltage. If an upgrade to
10 a higher voltage is made, it should be done by
11 13.5 to 250 kV of transformers -- and two
12 transformers in series doing it with the 115 kV
13 being -- up 1 to 2 to go to Silicon Valley Power.

14 Silicon Valley Power is not a viable
15 alternative because it is wholly owned by the City
16 of Santa Clara, and you're running local
17 facilities, and this facility is located wholly
18 within the city of San Jose.

19 We get into some other effects such as
20 biological effects and air quality. One of those
21 is is the use of recycled water. In the first
22 place the cooling tower that is there is painted a
23 different color than was depicted in basically all
24 your key observation points. It stands out like a
25 sore thumb on purpose.

1 With that being problematic, it needs a
2 paint job at the very minimum in order to return
3 it to the same coloration as the rest of the plant
4 was depicted in all the hearings and visuals in
5 the original application.

6 We also need to go into the actual
7 cooling tower, itself, and the fact of using
8 recycled water. Originally in San Jose when they
9 first started using recycled water at the San Jose
10 State Power Plant on their particular campus, you
11 had an epidemic where all the hospitals were
12 filled. Since Los Esteros was set up, you also
13 had another epidemic and influenza.

14 And, once again, when the Pico Plant
15 opened up nearby, you also had another influenza
16 epidemic. You have also started a new strain of
17 influenza called A/California that is now
18 recognized by the CDC that is only prevalent in
19 this area where these power plants are using
20 recycled water specifically from the City of San
21 Jose.

22 Those are some issues that are very
23 important.

24 ACTING CHAIRPERSON PFANNENSTIEL: Mr.
25 Garbett, thank you for your contributions. Are

1 there responses?

2 (Telephone noise interference.)

3 ACTING CHAIRPERSON PFANNENSTIEL: I'm
4 sorry, what's the --

5 UNIDENTIFIED SPEAKER: Somebody's
6 fighting with him for the pay phone.

7 ACTING CHAIRPERSON PFANNENSTIEL: Mr.
8 Sarvey, do you have something additional to add?

9 MR. SARVEY: I just wanted to briefly
10 respond to just two statements and I won't take
11 much more time.

12 As staff said, I believe that section
13 25552 requires that this project adopt best
14 available control technology. And because this is
15 a new license at the Energy Commission they're
16 required to adopt this LORS. And as Steve Hill
17 from the Air District said at the PMPD conference,
18 if this was a new license before the Bay Area Air
19 Quality Management District, as it is before the
20 Commission, they would be required to adopt 2.5
21 ppm.

22 In fact, Calpine has three peakers right
23 now that are running at 2.5 ppm with the same
24 equipment. So there's not any need to tear out
25 the equipment. That's incorrect. LM Sprint 6000s

1 have been demonstrated in practice at 2.5 ppm in
2 simple cycle mode. So, I disagree.

3 I believe that the Energy Commission is
4 required by the Warren Alquist Act to adopt all
5 LORS, regulations and standards for this project
6 of which BACT of 2.5 for NOx is.

7 And then as far as the energy resources
8 statement, staff not calculating the limitations
9 of the power plant in the evidence on the record
10 shows that the evidentiary record is incomplete.
11 And, in fact, when that occurred in the MEGS
12 project we had to call another conference; we had
13 to have another evidentiary hearing; and I believe
14 that's necessary here.

15 Thank you.

16 ACTING CHAIRPERSON PFANNENSTIEL: Thank
17 you. Further comment, anybody from the public?
18 Mr. Wheatland.

19 MR. WHEATLAND: I just want to add one
20 comment. Mr. Sarvey's repeatedly mischaracterized
21 Mr. Hill's testimony before the Committee, even
22 after Mr. Hill corrected Mr. Sarvey.

23 Mr. Hill has not said that if this were
24 a new application or a new license that they lower
25 BACT standards would be applicable. What he said

1 was that if this was a new source, if this were a
2 new project, then the lower standards could be
3 applicable. But Mr. Hill emphasized that the mere
4 fact that the project is being recertified is not
5 under the District's rules a requirement for
6 applying a new, lower and more stringent standard.

7 ACTING CHAIRPERSON PFANNENSTIEL: Thank
8 you. I think the Commission has before it the
9 proposed Presiding Member's Proposed Decision with
10 the addendum. Do we have a motion for approval?

11 COMMISSIONER GEESMAN: So moved.

12 COMMISSIONER BOYD: Second.

13 ACTING CHAIRPERSON PFANNENSTIEL:

14 Motion, Geesman; second, Boyd.

15 All in favor?

16 (Ayes.)

17 ACTING CHAIRPERSON PFANNENSTIEL:

18 Opposed? Carried four to nothing.

19 Item 5, Consideration and possible
20 approval for the Energy Commission to enter into
21 agreements with the Infrastructure and Economic
22 Development Financing Authority for an approximate
23 \$40 million revenue bond sale.

24 Now, I understand that we have on the
25 phone Eric Tashman from Sidley, Austin, Brown and

1 Wood, who's the bond counsel on this. Mr. Mills.

2 MR. MILLS: Good morning, Commissioners.

3 I'm Daryl Mills from the Public Programs Office.

4 Also in attendance today in the audience are Blake

5 Fowler and Stan Hazelroth who are with the

6 Infrastructure and Economic Development Bank.

7 They're our conduit financing authority.

8 Susan Wiel from Lamont Financial, our

9 financial advisor, is also in the audience. And I

10 believe Eric Tashman, our bond counsel, is on the

11 line. Are you there, Eric? Hello, Eric, are you

12 there?

13 MR. TASHMAN: I am.

14 MR. MILLS: Oh, good, thank you.

15 MR. TASHMAN: You're welcome.

16 MR. MILLS: Two years ago in April of

17 2003 the Energy Commission, in conjunction with

18 the California Consumer Power and Conservation

19 Financing Authority, sold a bond in the amount of

20 \$28,005,000 to provide low interest loans to

21 public agencies.

22 The proceeds of the 2003 bonds have been

23 fully committed for loans. Today the staff is

24 asking for approval for the Energy Commission to

25 sell additional bonds in the amount of

1 approximately \$40 million through the
2 Infrastructure and Economic Development Bank.

3 Proceeds will be used to make additional
4 loans, and it is anticipated that these funds will
5 allow the Commission to continue at its current
6 rate for about 18 months to two years to make
7 those loans.

8 These proposed bonds are the second bond
9 issue under the Energy Commission's master trust
10 revenue bond series. This second series of bonds
11 is structured similarly to the bonds that we
12 issued in 2003.

13 The staff is also asking that the
14 Commission delegate to the Executive Director, the
15 Chief Deputy Director, Chair or the Vice Chair,
16 the authority to execute all bond documents on
17 behalf of the Commission. And delegation is
18 essential to enable the Energy Commission to
19 execute these documents at closing in a timely
20 fashion. A similar delegation was made in 2003 to
21 our Executive Director.

22 Your approval of this item would
23 authorize the Commission to move forward with the
24 bond sale process. Following your approval, the
25 Infrastructure Bank Board will convene on March

1 22nd to also approve the sale of bonds.

2 On or about March 23rd the preliminary
3 official statement for the bond issue will be
4 released to the public. The current schedule
5 anticipates that the sale of the bonds to be sold,
6 and the proceeds delivered to the Commission
7 approximately April 20th.

8 For the record I'd like to provide you
9 some additional background on this item. Proceeds
10 from the sale of the proposed bonds provide funds
11 for the Energy Conservation Assistance Act and are
12 used to continue to make loans to qualified public
13 agencies.

14 The Commission's ECAA loan program has
15 been in existence since 1979 providing loans to
16 public and nonprofit schools, hospitals and public
17 care facilities, as well as local governments and
18 special districts.

19 The Commission also has another loan
20 account called the Local Jurisdiction Account.
21 It's been in existence since 1988. It also
22 provides loans to city, county and school
23 districts.

24 Both of these accounts are used to
25 finance installation of energy efficiency, self

1 generation and renewable projects. The loans are
2 repaid from energy savings resulting from the
3 projects. Over 670 loans have been awarded
4 through these accounts totaling over \$130 million.

5 In 1995 the Legislature granted the
6 Commission the authority to use the repayments
7 from our loans as revenue to support a bond. In
8 April of 2003 the Commission sold its first \$28
9 million bond. And that bond was supported by
10 repayments from 93 ECAA loans with an outstanding
11 principal of \$32 million.

12 The proceeds of those bonds were loaned
13 out within a 14-month period. In September of
14 2004 CPA's role in the 2003 bonds was transferred
15 to the Infrastructure Bank. The Infrastructure
16 Bank also filed a reimbursement resolution that
17 authorized any loans made after September of 2004
18 to be eligible to receive bond proceeds from this
19 anticipated bond sale.

20 We now have approximately \$6 million in
21 loans backlogged, ready to be funded with the
22 proceeds of this bond. The Energy Commission
23 Staff has worked through all the details of this
24 second series of bonds. The Commission team
25 consisted of representatives from our legal

1 office, our loans and grants office, budget and
2 accounting offices and public programs office.

3 Additionally the bond team included
4 staff from the Infrastructure Bank and the State
5 Treasurer's Office. Sidley, Austin, Brown and
6 Wood served as our bond counsel; Goldman Sachs and
7 Company as our underwriters; Orick Herrington and
8 Sutcliffe is our underwriter's counsel. Lamont
9 Financial Services Corporation and Public
10 Financial Management served as our co-financial
11 advisors. The State Treasurer's Office is the
12 agent of sale.

13 The bond trustee for this transaction is
14 yet to be selected. But will be a leading
15 financial institution specializing in trustee
16 services. And it should be selected very soon.

17 The new bonds to be released in 2005
18 will be supported by repayments from 69 existing
19 loans with an outstanding principal balance of \$44
20 million.

21 In addition, the Energy Commission will
22 also set aside approximately \$8 million in ECAA
23 program funds for a debt service reserve account.
24 That's equal to 20 percent of the proposed maximum
25 bond sale.

1 Since this is our second of our series
2 of bonds, the excess cash flow from the first bond
3 series will also be available through the master
4 trust account to cross-collateralize this bond and
5 provide additional security to the bond holders.

6 The loan repayments from these 69 loans
7 provide excess coverage at a minimum of \$1.07 for
8 every \$1 that we're owed bondholders in this
9 transaction. Interest earned on our reserve
10 account helps to boost the total coverage to \$1.10
11 for every \$1 owed.

12 The structure of our bonds provides a
13 very strong credit and substantially similar to
14 the structure we used in 2003. The structure
15 provides ample security for the bonds, and will
16 allow up to a 32 percent default on our loans and
17 still make the bondholders whole.

18 Our actual default rate on our loans is
19 essentially zero, so you can see how strong the
20 credit strength is on these bonds.

21 I'm pleased to report that Moody's
22 Investors Services has recently received -- or
23 reviewed our bond structure and has awarded our
24 proposed bonds at AA3 rating. That's the same
25 rating as we got in 2003.

1 All of the necessary documents for the
2 sale of approximately \$40 million in bonds are
3 essentially complete. We're recommending that the
4 Executive Director, Chief Deputy Director, Chair
5 and Vice Chair, acting on behalf of the Energy
6 Commission, all be authorized to execute all of
7 the principal documents related to the 2005-8
8 bonds including several conforming amendments and
9 restatements of several 2003-8 bond documents.
10 And we're restating some of those bond documents
11 so the bonds can work better in tandem.

12 The main documents will include the
13 preliminary official statement; the secured loan
14 agreement; the amended and restated master trust
15 agreement; the bond purchase contract; the
16 continuing disclosure agreement; the tax
17 certification agreement; the amended restated
18 amendments for the 2003-8 bonds.

19 Copies of these documents were provided
20 to the Commissioners for their review.

21 Today we are asking for your approval of
22 a resolution prepared by our bond counsel and
23 approved by the Commission's legal office. The
24 resolution authorizes the Executive Director, the
25 Chair, Vice Chair and the Deputy Director to

1 execute and deliver to the issuer any of the --
2 and all documents necessary to complete the bond
3 transaction.

4 The resolution authorizes any changes as
5 may be required to these documents, with the
6 advice of bond counsel, as long as the changes are
7 nonsubstantive and do not change the basic
8 structure of the bond proposal.

9 This item has been reviewed and approved
10 by our Energy Efficiency Committee for
11 consideration at the Commission today. And if you
12 have any questions, I'm available to answer them,
13 as well as our bond counsel is available on the
14 line.

15 ACTING CHAIRPERSON PFANNENSTIEL: Any
16 questions? Commissioner Geesman.

17 COMMISSIONER GEESMAN: Yes, Madam Chair.
18 Eric, it's John Geesman.

19 MR. TASHMAN: Hi, John.

20 COMMISSIONER GEESMAN: I want to go over
21 basically the same colloquy that we had two years
22 ago, as it relates to the Commission's liability
23 under the securities laws for the disclosure
24 document, which is identified as preliminary
25 official statement in our backup materials.

1 Could you summarize what --

2 MR. TASHMAN: Sure.

3 COMMISSIONER GEESMAN: -- our
4 obligations are?

5 MR. TASHMAN: Sure. For those of you
6 who were there in 2003, this advice will largely
7 repeat the advice I gave in 2003.

8 As in the case of the series 2003 bonds,
9 the Energy Commission has pledged a portfolio of
10 loans to secure repayment of the bonds. The bonds
11 are not a general obligation of the Energy
12 Commission, but are limited obligations payable
13 solely from these loans and any additional moneys
14 that might be available under the master
15 indenture.

16 Therefore, as a matter of contract law
17 the sole recourse that bondholders have against
18 the Commission is limited to the loans that have
19 been pledged.

20 However, as Mr. Geesman is pointing out,
21 the sale of the bonds is subject to the anti-fraud
22 provisions of the federal securities laws. And if
23 there is a material misstatement or omission in
24 the official statement the Securities and Exchange
25 Commission could bring an investigation, an

1 enforcement action, and private investors could
2 bring lawsuits for damages.

3 The standard of conduct enunciated by
4 the SEC, which is applicable to municipal
5 officials, and is more lenient than that imposed
6 on corporate officers, I might add, who are held
7 to a higher standard of conduct, is one of
8 recklessness. In other words, in our case, have
9 the Commissioners, in approving this official
10 statement, or this preliminary official statement
11 shown basically a blatant disregard for fact that
12 should have been in their possession, or they
13 should have been aware of, with the result that
14 material facts in the official statement were
15 either untrue or omitted.

16 Now in order to satisfy that standard of
17 conduct my recommendation to the Commissioners is
18 as it was in 2003, is that they should have a
19 general understanding of the contents of the
20 official statement, and that they should make
21 reasonable inquiries with staff to assure
22 themselves that staff has verified the facts that
23 are attributable to the Energy Commission in this
24 official statement, as we did in the 2003
25 transaction, and work with staff to assist them in

1 assuring that the presentation of the facts
2 relating to the loan portfolio and the loan
3 program are fairly presented.

4 But in the end it is up to the
5 Commission to confirm that staff has investigated
6 and verified the contents of the official
7 statement. And based upon those inquiries with
8 staff, and absent having any actual knowledge to
9 the contrary, I believe that the Commissioners'
10 personal securities law obligations with respect
11 to the initial statement would be satisfied.

12 I would add incidentally, you know, that
13 the secure loan agreement provides, as a
14 contractual matter, that no Commissioner and no
15 officer or employee of the Commission would be
16 personally liable for repayment of the bonds.
17 But, of course, that is a contractual disclaimer
18 in the document, and as a matter of contract law
19 it does not limit the Commissioners' potential
20 liability under federal securities laws.

21 That is a summary of my advice to you
22 that I gave in 2003. It is still accurate. And I
23 would welcome any questions.

24 COMMISSIONER GEESMAN: Madam Chair, I'm
25 satisfied that the preliminary official statement

1 accurately describes the program and the role of
2 the Energy Commission in the program. And I'm
3 prepared to move the item if you're ready for
4 that.

5 ACTING CHAIRPERSON PFANNENSTIEL: Thank
6 you. Is there any other discussion before the
7 motion? Take the motion from Commissioner
8 Geesman. Is there a second?

9 COMMISSIONER BOYD: Second.

10 COMMISSIONER ROSENFELD: Second. Two
11 seconds.

12 ACTING CHAIRPERSON PFANNENSTIEL: Second
13 to Commissioner Rosenfeld.

14 All in favor?

15 (Ayes.)

16 ACTING CHAIRPERSON PFANNENSTIEL: Any
17 opposed? Carried four to nothing. Thank you,
18 Daryl.

19 Item 6, 2005 Integrated Energy Policy
20 Report. Consideration and possible decision to
21 initiate enforcement activities, including issuing
22 a subpoena, for certain load-serving entities
23 subject to the Energy Commission's November 3,
24 2004 demand forecast submittal order.

25 Ms. Holmes.

1 MS. HOLMES: Thank you very much. Caryn
2 Holmes; I'm with the legal office, and I've been
3 assigned to assist the staff and the IEPR
4 Committee in the preparation of the 2005 IEPR.

5 I'd like to start first with an update
6 of the supply form filings. You had asked for
7 that two weeks ago, and it's not on the agenda.
8 And it is just an update.

9 Those forms were due the 1st of March.
10 Of the 23 entities from whom we had sought
11 information, we have received filings from 16. Of
12 the seven who have not filed we are in
13 communication with them and working on getting the
14 information in.

15 Some of the filings that have come in
16 are only partially complete, and we're working
17 with those entities, as well, to try to insure
18 that we get complete information.

19 Finally, there may be an issue that we
20 need to address in the near future with NCPA, the
21 Northern California Power Agency. We had asked
22 for information from it as an entity, and it has
23 not provided that, claiming that because its
24 members are under the 200 megawatt threshold they
25 may not need to provide the information. But we

1 are trying to work with them to get the
2 information.

3 At this point staff has recommended to
4 the IEPR Committee that we take no action with
5 respect to the supply data, but that we put it on
6 the business meeting for two weeks hence to see if
7 there is any enforcement action that needs to be
8 considered at that time.

9 Secondly, with respect to the demand
10 forecast data, we had received information from
11 everybody except a couple of municipal utilities,
12 Pasadena and -- now my mind is blank and I'm
13 forgetting the other one -- no, there was a third
14 one, Glendale. Glendale and Pasadena have either
15 at this point actually provided to us, or
16 committed to providing it to us very soon.

17 We have received nothing from Burbank,
18 even though the data was due on February 1st, and
19 we're becoming quite concerned about that. They
20 did file last night. However, of the 19
21 categories of data which we had requested, only
22 six were completed. The other 13 are blank. And
23 the six that are completed, are completed in a
24 rather simplistic way.

25 So at this point we feel fairly

1 confident that with respect to the other two
2 municipal utilities we are making progress, but we
3 have recommended to the Committee that the
4 Commission hold this over for another two weeks
5 and see if enforcement action against Burbank is
6 necessary.

7 I believe that Mr. Therkelsen may --

8 MR. THERKELSEN: Yes, Commissioners. As
9 mentioned last time we are taking this very
10 seriously. While we are not asking the Commission
11 to take any action today, we will continue to be
12 looking into this. If we can get some cooperation
13 and this missing material filled in, that would be
14 fine. If not, then the staff may still come
15 forward and ask you to subpoena all or a portion
16 of that data. And/or the staff may consider
17 filing a complaint.

18 But we will continue to update you on
19 the progress of this.

20 ACTING CHAIRPERSON PFANNENSTIEL: Thank
21 you. So we'll look for a report on this in two
22 weeks?

23 MR. THERKELSEN: That's correct.

24 ACTING CHAIRPERSON PFANNENSTIEL: Thank
25 you.

1 Item 7, possible approval of contract
2 500-04-020 for \$270,000 to further develop and
3 commercialize the Green Building Studio, a web-
4 based software service that allows designers to
5 improve energy performance of building
6 construction and renovation during the conceptual
7 design phase.

8 Ms. Brook.

9 MS. BROOK: Hello; I'm Martha Brook with
10 the PIER buildings program.

11 This proposed project continues earlier
12 PIER-funded research by Geopraxis which developed
13 and launched a commercially viable web service,
14 the Green Building Studio, which provides an easy
15 way to do energy analysis during the conceptual
16 design phase of an architectural project.

17 This enables building designers to make
18 informed decisions on cost effective design
19 modifications with large energy impacts. A key
20 accomplishment of the earlier work is that this
21 Green Building Studio web service can now be
22 enabled within more than half of the 3D CAD tools
23 used in the market today.

24 This proposed project will update the
25 Green Building Studio to allow building designers

1 to quickly modify their designs to determine what
2 combination of features will minimize building
3 energy use in the most cost effective manner.

4 This project will be completed in
5 partnership with the Northwest Energy Efficiency
6 Alliance, Pacific Gas and Electric and leading
7 architectural design software companies.

8 The R&D Committee has approved this
9 project and I'm here to answer any questions that
10 you might have.

11 ACTING CHAIRPERSON PFANNENSTIEL: Thank
12 you. Are there questions?

13 COMMISSIONER ROSENFELD: I move the
14 item.

15 COMMISSIONER GEESMAN: Second.

16 ACTING CHAIRPERSON PFANNENSTIEL:
17 Motion, Rosenfeld; second, Geesman.

18 Approved?

19 (Ayes.)

20 MS. BROOK: Thank you.

21 ACTING CHAIRPERSON PFANNENSTIEL:
22 Carried, four nothing.

23 Item 8, Possible approval of contract
24 500-04-023 for \$732,000 to conduct zero-energy new
25 homes research and development.

1 Ms. Jenkins.

2 MS. JENKINS: Good afternoon,
3 Commissioners. My name is Nancy Jenkins; I manage
4 the Commissioner's PIER buildings program.

5 The item before you is the first of
6 three contracts that we are proposing as part of
7 our zero-energy new home solicitation. The
8 purpose of this contract, as with the others, is
9 to develop new innovative designs and pilot them
10 for new homes in California that optimize both the
11 inclusion of energy efficiency measures and
12 building-integrated PV strategies.

13 This will result in two pilot
14 developments in southern California, include
15 significant participation from both LADWP, as well
16 as San Diego Gas and Electric. We expect that
17 there will be 110 units developed and piloted as a
18 result of this particular project that will also
19 include some very innovative, and we believe,
20 effective cost reduction strategies in terms of
21 integrating some very creative third-party
22 financing strategies.

23 Excuse my voice, I'm trying to recover
24 from a cold. It's also very well integrated with
25 the multifamily affordable housing market. And we

1 expect that a lot of the strategies developed from
2 this contract will be carried forward beyond the
3 term of this particular contract.

4 ACTING CHAIRPERSON PFANNENSTIEL: Thank
5 you. Are there questions from the Commission?

6 COMMISSIONER ROSENFELD: I move the
7 item.

8 COMMISSIONER GEESMAN: Second.

9 ACTING CHAIRPERSON PFANNENSTIEL:
10 Motion, Rosenfeld; second, Geesman.

11 All in favor?

12 (Ayes.)

13 ACTING CHAIRPERSON PFANNENSTIEL:
14 Carried four nothing. Thank you.

15 Minutes from March 2nd; is there a
16 motion?

17 COMMISSIONER BOYD: Move adoption.

18 COMMISSIONER ROSENFELD: Second.

19 ACTING CHAIRPERSON PFANNENSTIEL: Motion
20 and second. In favor?

21 (Ayes.)

22 ACTING CHAIRPERSON PFANNENSTIEL:
23 Commission Committee and Oversight. I have
24 nothing. Any other Commissioners? Nothing.
25 Chief Counsel's Report.

1 MR. CHAMBERLAIN: Yes, Madam Chair.

2 Last evening, early evening I spoke with a
3 reporter in southern California who informed me
4 for the first time that a filing was made in the
5 Supreme Court on Monday.

6 To my knowledge -- this is in the El
7 Segundo matter -- to my knowledge, the Commission
8 has not been officially served with that filing
9 yet. We are determining when that will occur.
10 Probably it has happened by mail.

11 But in any case, the Commission has an
12 opportunity to file a response to that within the
13 next few days. The earliest time would be Monday,
14 the 21st, and the latest time would be Thursday,
15 the 24th.

16 I would suggest if there are any
17 questions about this that we go into closed
18 session briefly after this meeting.

19 COMMISSIONER BOYD: Can you divulge who
20 filed?

21 MR. CHAMBERLAIN: It's my understanding
22 that the filing was made by Santa Monica Baykeeper
23 and Heal The Bay.

24 ACTING CHAIRPERSON PFANNENSTIEL: Thank
25 you. Executive Director's report.

1 MR. THERKELSEN: Afternoon,
2 Commissioners. One very quick item. We're about
3 ready to embark on the next part of the 2005/2006
4 budget cycle. On the 25th we will be having a
5 meeting with the staff of the Assembly Budget
6 Committee. And the hearing before the Assembly
7 will be on April the 6th.

8 I will be meeting with the staff of the
9 Senate Budget Committee on April the 6th. And the
10 hearing on that will be on April the 18th.

11 And you're in good hands between Jackie
12 and Scott and Randy. I think we're prepared and
13 ready to go.

14 ACTING CHAIRPERSON PFANNENSTIEL: Thank
15 you, Bob.

16 Leg Director, I see nobody from the leg
17 office.

18 Public Adviser report. Nobody there.

19 Public Comment. We are down to
20 ourselves. I see no member of the public here.

21 So, with that, the meeting is adjourned.

22 (Whereupon, at 12:20 p.m., the business
23 meeting was adjourned.)

24 --o0o--

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Business Meeting; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
meeting, nor in any way interested in outcome of
said meeting.

IN WITNESS WHEREOF, I have hereunto set
my hand this 25th day of March, 2005.

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